SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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

Plaintiffs,

-against-

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

Defendants.

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VERIFIED SECOND SUPPLEMENTAL COMPLAINT

Index #1788-2014

JURY TRIAL DEMANDED

> "…one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York's Constitution '…The doors of each house shall be kept open…'; Public Officers Law, Article VI 'The legislature therefore declares that government is the public's business...'; Senate Rule XI, §1 'The doors of the Senate shall be kept open'; Assembly Rule II, §1 'A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public' – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, [FLANAGAN], [HEASTIE], SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget."
>
> – culminating final paragraph of plaintiffs' verified complaint (¶126) & verified supplemental complaint (¶236)

Plaintiffs, as and for their verified second supplemental complaint, respectfully set forth and allege:

237. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001. The expenditures of such budget bill – embodying the Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

238. Plaintiffs also seek, pursuant to State Finance Law Article 7-A, a declaration voiding the "force of law" judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with a further declaration striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent.

239. Additionally, plaintiffs seek declarations that the so-called "one-house budget proposals", emerging from the closed-door political conferences of the Senate and Assembly majority party/coalitions, are unconstitutional, as are the proceedings based thereon of the Senate and Assembly joint budget conference committee and its subcommittees; and that the behind-closed-doors, three-men-in-a-room budget dealing-making by the Governor, Temporary Senate President, and Assembly Speaker – such as produced Chapter 60, Part E, of the Laws of 2015 – is unconstitutional and enjoining same with respect to Judiciary/Legislative Budget Bill #S.6401/A.9001 and the whole of the Executive Budget.

240. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint pertaining to the Legislature's and Judiciary's proposed budgets and the Governor's Legislative/Judiciary Budget Bill #S.6351/A.8551 for fiscal year 2014-2015 and the entirety of their March 31, 2015 verified supplemental complaint pertaining to the Legislature's and Judiciary's proposed budgets and the Governor's Legislative/Judiciary Budget Bill #S.2001/A.3001 for fiscal year 2015-2016, incorporating both by reference, as likewise the record based thereon.

241. Virtually all the constitutional, statutory, and rule violations therein detailed are replicated in the Legislature's and Judiciary's proposed budgets for fiscal year 2016-2017 and the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001 – including as to the judicial salary increases that will automatically take effect April 1, 2016. As stated at ¶129 of the verified supplemental complaint – and even truer now – "It is, as the expression goes, "déjà vu all over again".

242. For the convenience of the Court, a Table of Contents follows:

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* * *

FACTUAL ALLEGATIONS

The Legislature's Proposed Budget for Fiscal Year 2016-2017

243. By a one-sentence letter virtually identical, but for the dates, to the one-sentence letters for fiscal years 2014-2015 and 2015-2016 (¶¶17-18, 131), defendants FLANAGAN and HEASTIE, as Temporary Senate President and Assembly Speaker, addressed a December 1, 2015 letter to defendant CUOMO stating:

> "Attached hereto is a copy of the Legislature's Budget for the 2016-2017 fiscal year pursuant to Article VII, Section I of the New York State Constitution." (Exhibit 24-d)[1]

244. Identical to those previous letters, this December 1, 2015 letter was not sworn to, but merely signed. It made no claim to be attaching "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house" – as required by Article VII, §1 of the New York State Constitution.

245. Except for minor changes in its narrative text, the transmitted legislative budget (Exhibit 24-e) was identical in its formatting to the transmitted legislative budgets for the two previous fiscal years.[2] It consisted of an untitled five-page budget narrative, with a sixth page chart entitled "All Funds Requirements for the Legislature", and a ten-page "Schedule of Appropriations". There was no certification among these 16 pages, nor even a reference to "itemized estimates" of the Legislature's "financial needs", or to Article VII, §1 of the New York State Constitution.

246. Each and every figure in the transmitted legislative budget for fiscal year 2016-2017 was identical to each and every figure of the legislative budgets for the last two fiscal years. As such,

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[1] This verified second supplemental complaint continues the sequence of exhibits that began with the verified supplemental complaint and thereafter continued with plaintiffs' affidavits in support of their September 22, 2015 cross-motion for summary judgment and other relief.

[2] The reference to "the two previous fiscal years" and similar references are shorthand for what is actually the current 2015-2016 fiscal year and the 2014-2015 fiscal year.

these figures were also identical to virtually every figure in the legislative budgets for fiscal years 2013-2014, 2012-2013, and 2011-2012.

247. Identically to the last two years, more than half of the 10-page "Schedule of Appropriations" was devoted to less than 10% of the budget. Most of the 90% balance consisted of lump-sum appropriations: (i) for defendant SENATE's member offices and committees, combined in a single lump sum; (ii) for defendant ASSEMBLY's member offices and committees, combined in a single lump sum; (iii) for defendant SENATE's "senate operations", which was its own lump-sum; and (iv) for defendant ASSEMBLY's "administrative and program support operations", another lump sum.

248. Identically to the last two years, the transmitted 16-page legislative budget contained no "General State Charges", which were not even mentioned.

249. Identically to the last two years, the transmitted 16-page legislative budget contained no reappropriations, which were not even mentioned.

250. Identically to the last two years, neither defendant SENATE nor defendant ASSEMBLY then or thereafter posted the December 1, 2015 transmittal letter and 16-page legislative budget on their websites.[3]

The Judiciary's Proposed Budget for Fiscal Year 2016-2017

251. By two memoranda, dated December 1, 2015, Chief Administrative Judge Lawrence Marks furnished a two-part presentation of the Judiciary's proposed budget to defendants CUOMO, FLANAGAN, and HEASTIE, the Minority Leaders of the Senate and Assembly, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee,

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[3] Identically to the last two years, only defendant ASSEMBLY furnished the transmittal letter and 16-page budget in response to plaintiffs' FOIL request (Exhibits 24-a, 24-b, 24-c).

and the Chairs of the Senate and Assembly Judiciary Committees. In language identical to that used in the two memoranda of the past two years, the Chief Administrative Judge represented these as: "itemized estimates of the annual financial needs of the Judiciary…" for its operating expenses (Exhibit 25-a) and

> "itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary." (Exhibit 26-a).

The latter memorandum explained that the two-part presentation:

> "follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2016-2017 Fiscal Year." (Exhibit 26-a, underlining added)

252. The two parts of the Judiciary's proposed budget contained, for each part, a certification by the Chief Judge and approval by the Court of Appeals (Exhibits 25-b, 26-b) identical to those furnished in the last two years. However, identically to the last two years, because of the future tense "will" pertaining to the "single budget bill" and the bill's placement in the "Executive Summary" section, NO certification appeared to encompass the "single-budget bill" (Exhibits 26-a, 25-c, 25-d).

253. Identically to the last two years, the Judiciary's two-part budget, including its single "Executive Summary" and statistical tables (Exhibit 25-c), did not provide a cumulative dollar total for the budget request. Likewise, the Judiciary's "single budget bill" (Exhibit 25-d) did not provide a cumulative tally.

254. Identically to the last two years, the Judiciary's failure to provide a cumulative dollar total for its two-part budget and to tally the figures in its "single budget bill" enabled it to conceal a

discrepancy of tens of millions of dollars between them. This discrepancy was the result of $73,460,000 in reappropriations in the "single budget bill" (Exhibit 25-d, pp. 11-13) that were not in the Judiciary's two-part budget presentation (Exhibit 25-e).

255. Identically to the last two years, the Judiciary's "single budget bill" (Exhibit 25-d) consisted of two sections: the first, denominated §2, containing appropriations, including "General State Charges" (pp. 1-10), and the second, denominated §3, containing reappropriations (pp. 11-13).

256. Identically to the last two years, §2 of the "single budget bill" began with a paragraph reading:

> "The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2016." (Exhibit 25-d, p. 1).

Under the heading "SCHEDULE", a further paragraph stated:

> "Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts." (Exhibit 25-d, p. 1).

257. Identically to the last two years, §3 of the "single budget bill" began with a paragraph reading:

> "The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated being the unexpended balances of a prior year's appropriation, are hereby reappropriated from the same funds and made available for the same purposes as the prior year's appropriation, unless amended herein, for the state fiscal year beginning April 1, 2016." (Exhibit 25-d, p. 11).

258. The descriptions of the reappropriations in the "single-budget bill's" §3 were pretty barren. Most referred to chapter 51, section 2 of the laws of 2015, 2014, 2013, 2012, 2010 and also

chapter 51, section 3 of the laws of 2015 – which are the enacted budget bills for the Judiciary for those years, its appropriations and reappropriations, respectively. Yet they were completely devoid of specificity as to their purpose other than a generic "services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1…"; or "Contractual Services" (Exhibit 25-d, pp. 11-13).

259. The single Executive Summary, contained in the Judiciary's budget of operating needs identified that over the past six years the Judiciary had "absorbed hundreds of millions of dollars in higher costs" (Exhibit 25-c, p. i). It annotating footnote #1 specified these to have included "judicial salary adjustments implemented pursuant to the recommendations of the 2011 Special Commission on Executive Compensation." A further footnote, #4, stated:

> "There is also the currently unknown cost of a salary adjustment for judges that will be recommended by the Commission on Legislative, Judicial and Executive Compensation, to take effect on April 1, 2016. The recommendations of the Commission with respect to judicial compensation are due by December 31, 2015, and therefore the cost of the recommended adjustment is not now known and is not included in this request. If necessary, the Judiciary will submit a supplemental budget request to cover the cost of the April 2016 salary adjustment." (Exhibit 25-c, p. v).

The Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001

260. Identically to the last two years, defendant CUOMO combined the Legislature's proposed budget and the Judiciary's proposed budget into a combined budget bill – #S.6401/A.9001, introduced on January 13, 2016 (Exhibit 27-b). The legislative portions of the bill, §1 and §4 (pp. 1-9, 25-48), were non-consecutive. The judiciary portions of the bill, §2 and §3 (pp. 10-21, 22-24), were consecutive and were, *verbatim*, the same §2 and §3 that were the entirety of the Judiciary's "single budget bill" (Exhibit 25-d).

261. Identically to the last two years, §1 of the bill pertaining to the Legislature (Exhibit 27-b, pp. 1-9), replicated the 10-page schedule of legislative appropriations for fiscal year 2016-2017

that Temporary Senate President FLANAGAN and Assembly Speaker HEASTIE had furnished to defendant CUOMO (Exhibit 24-e). However, it added the following prefatory paragraph to §1:

> "The several amounts named in this section or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the fiscal year beginning April 1, 2016." (Exhibit 27-b, p. 1, underlining added).

262. Identically to the last two years, this prefatory paragraph for legislative appropriations in §1 mirrored the prefatory paragraph for judiciary appropriations in §2, whose wording differed only by the following underlined words:

> "…to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2016." (Exhibit 27-b, p. 10, underlining added).

263. Identically to the last two years, the bill's §3 for the Judiciary bore the title "Reappropriations" (Exhibit 27-b, p. 22). By contrast, §4 – which were reappropriations for the Legislature – did not bear such identifying title (Exhibit 27-b, p. 25).

264. Identically to the last two years, the §4 legislative reappropriations (Exhibit 27-b, pp. 25-48) were not part of the legislative budget that defendants FLANAGAN and HEASTIE had transmitted by their December 1, 2015 coverletter (Exhibit 24-d). The reappropriations, spanning 24 pages and untallied, amounted to tens of millions of dollars, and, by description, were not suitable for certification as reappropriations.

265. Identically to the last two years, these legislative reappropriations at §4 were prefaced by the following two-paragraph text:

> "The several amounts named herein, or so much thereof as shall be sufficient to accomplish the purpose designated, being the unexpended balances of prior year's appropriations, are hereby reappropriated from the same funds and made available for the same purposes as the prior year's appropriations, unless amended herein, for the state fiscal year beginning April 1, 2016.

> For the purpose of complying with the state finance law, the chapter, section, and year of the last act reappropriating a former original appropriation or any part thereof was, unless otherwise indicated, chapter 51, section 4, of the laws of 2015. Where the full text of law being continued is not shown, leader dots … are used. However, unless a change is clearly indicated by the use of brackets [ ] for deletions and italics for additions, the purposes, amounts, funding source and all other aspects pertinent to each item of appropriation shall be as last appropriated." (Exhibit 27-b, p. 25, underlining added).

266. Upon information and belief, the unidentified "state finance law' referred to is State Finance Law §25, entitled "Reappropriation bills", which reads:

> "Every appropriation reappropriating moneys shall set forth clearly the year, chapter and part or section of the act by which such appropriation was originally made, a brief summary of the purposes of such original appropriation, and the year, chapter and part or section of the last act, if any, reappropriating such original appropriation or any part thereof, and the amount of such reappropriation.
>
> If it is proposed to change in any detail the purpose for which the original appropriation was made, the bill as submitted by the governor shall show clearly any such change."

267. Identically to the last two fiscal years, defendant CUOMO's Legislative/Judiciary Budget Bill #S.6401/A.9001 showed no "brackets [ ]" or "italics" for the reappropriations indicating any changes in "the purposes, amounts, funding sources and all other aspects pertinent to each item…as last appropriated".

268. Identically to the last two years, defendant CUOMO's legislative portion of his Budget Bill #S.6401/A.9001, while adding these tens of millions of dollars in untallied legislative reappropriations that had not been part of the December 1, 2015 transmitted legislative budget (Exhibit 24-e), did not add "General State Charges" for the Legislature, although these also had not been presented by its December 1, 2015 budget.

269. Identically to the last two years, the §3 judiciary reappropriations were not from the Judiciary's certified two-part budget presentation (Exhibits 25, 26). Rather, they were §3 of the Judiciary's seemingly uncertified "single budget bill" and only partially tallied (Exhibit 25-d, pp. 1,

11-13). The total tally of the judiciary reappropriations in defendant CUOMO's Budget Bill #S.6401/A.9001 is $73,460,000.

270. Identically to the last two years, defendant CUOMO's Budget Bill #S.6401/A.9001 (Exhibit 27-b) gives no cumulative dollar total for his bill as a whole (pp. 1-48), nor for its §1 and §4 legislative portion (pp. 1-9, 25-48), nor for its §2 and §3 judiciary portion (pp. 10-21, 22-24), thereby concealing the hundreds of millions of dollars in legislative and judiciary reappropriations.

271. Identically to the last two years, defendant CUOMO did not accompany his Budget Bill #S.6401/A.9001 with any fiscal notes, fiscal impact statements, or introducer's memoranda, notwithstanding required by Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) – made applicable by Senate Rule VII, §6 and Assembly Rule III, §2(g) which identically state:

> "When a bill is submitted or proposed by the Governor, by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill".

The Governor's Commentary

272. Although Article VII, §1 of the New York State Constitution empowers the Governor to make "such recommendations as he may deem proper" with respect to the budgets for the Legislature and Judiciary, this year, identically to the last two years, defendant CUOMO gave "Commentary" only as to the Judiciary budget (Exhibit 27-a).

273. Identically to the last two years, defendant CUOMO's "Commentary" furnished no cumulative dollar amount of the Judiciary's proposed budget and urged its reduction to meet a 2% cap on increases – including by its conclusion:

> "Furthermore, acknowledging the need to evaluate judicial salaries, the recommendations of the New York State Commission on Legislative, Judicial, and Executive Compensation to provide for judicial salary increases on par with federal judges does not abrogate the Judiciary's responsibility to partner with us to maintain

> overall spending at 2 percent. I applaud the Judiciary for absorbing the first year of recommended Commission on Judicial Compensation salary increases in 2012-13, and I expect that they will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget. Indeed, for the past 3 years, Executive agencies have absorbed the cost of salary increases through productivity improvements and efficiency measures. I strongly urge the Legislature and Judiciary to work together to reduce the Judiciary's budget commensurate with the State's spending growth level of 2 percent." (Exhibit 27-a).

274. Upon information and belief, defendant CUOMO's acquiescence in the judicial salary increase recommendations of the Commission on Legislative, Judicial and Executive Compensation by his January 13, 2016 "Commentary" was with knowledge that they were even more statutorily-violative, fraudulent and unconstitutional than those of the Commission on Judicial Compensation and additionally, that plaintiffs had furnished his Chief Judge nominee, Westchester County District Attorney Janet DiFiore, with the relevant evidentiary proof by a December 31, 2015 letter entitled: "So, You Want to be New York's Chief Judge? – Here's Your Test: Will You Safeguard the People of the State of New York – & the Public Fisc?" (Exhibit 37) and that plaintiff SASSOWER had requested to testify at the Senate Judiciary Committee's January 20, 2016 hearing on her confirmation (Exhibit 38).

275. Plaintiffs' December 31, 2015 letter to Chief Judge Nominee DiFiore (Exhibit 37) is true and correct in all material respects.

276. Likewise, true and correct in all material respects are the enclosures to plaintiffs' December 31, 2015 letter, consisting of the following, all of which plaintiffs had furnished to the Commission on Legislative, Judicial and Executive Compensation:[4]

> (a) a full copy of plaintiffs' October 27, 2011 Opposition Report to the August 29, 2011 Report of the Commission on Judicial Compensation;[5]

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[4] See accompanying free-standing folder.

[5] Plaintiffs' full October 27, 2011 Opposition Report is already in the possession of the Court, having been furnished by plaintiffs in support of their September 22, 2015 cross-motion for summary judgment and other relief.

(b) plaintiffs' November 30, 2015 written testimony, with attachments;

(c) plaintiffs' December 2, 2015 supplemental submission;

(d) plaintiffs' December 21, 2015 further submission; and

(e) plaintiffs' June 27, 2013 conflict-of-interest/ethics complaint to JCOPE.

The Legislature's Joint Budget Hearings Pursuant to Legislative Law §32-a

277. On January 11, 2016, Senate Finance Committee Chair Catharine Young and Assembly Ways and Means Committee Chair Herman Farrell, Jr. announced the Joint Legislative Hearing Schedule on the 2016-2017 Executive Budget. Except for the dates, their announcement was identical to that of the past two years, stating, in pertinent part:

> "These hearings, each of which focuses on a programmatic area, are intended to provide the appropriate legislative committee with public input on the executive budget proposal…
>
> …The respective state agency or department heads will begin testimony each day, followed by witnesses who have signed up to testify on that area of the budget…
>
> Time constraints limit the number of witnesses that can be accommodated at any given hearing. As a result, people interested in testifying must contact the appropriate person listed on the schedule no later than the close of business, two business days before the respective hearing…
>
> The agency and the departmental portion of the hearings are provided for in Article 7, Section 3 of the Constitution and Article 2, Section 31 of the Legislative Law. The state Legislature is also soliciting public comment on the proposed budget pursuant to Article 2, Section 32-a of the Legislature Law." (Exhibit 28-a).

278. Plaintiff SASSOWER did not wait until "two business days prior" to request to testify. Rather, on January 12, 2016, the very next day after the announcement, and then the following day, January 13, 2016, she telephoned Chair Young's office, requesting two slots: one for testimony in opposition to the Judiciary budget and one for testimony in opposition to the Legislature's budget at the Legislature's February 4, 2016 budget hearing on "public protection". Indeed, before telephoning the second time, plaintiff SASSOWER confirmed with Chair Farrell's

office that the Legislature's budget would be in the "public protection" budget hearing, together with the Judiciary budget – and not, as might be otherwise assumed, in the "general government" budget hearing.

279. The call back plaintiff SASSOWER received, on February 13, 2016, was from Chair Young's chief of staff, who stated that there were many people requesting to testify and that plaintiff SASSOWER would not be getting confirmation that she would be testifying until a day before the hearing.

280. Plaintiff SASSOWER responded that the Judiciary and Legislature are not agencies, but government branches – and, therefore, should have their own budget hearings, especially as Legislative Law §32-a requires the Legislature to make "every effort to hear all those who wish to present statements at such public hearings" – and this plainly could not be done when the Legislature combines, in a single set of hearings, the public's hearings, pursuant to Legislative Law §32-a, with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31 for agency heads, to whom the Legislature gives precedence – putting members of the public at the end, if there is room.

281. Plaintiff SASSOWER may have additionally advised that she had a pending citizen-taxpayer action against the Legislature addressed to these issues. In any event, she had identified this and its significance in requesting to testify, last year, in opposition to the Judiciary and Legislature's budgets by a February 23, 2015 letter to the chairs and ranking members of the Senate Finance Committee and Assembly Ways and Means Committee.[6]

282. Despite plaintiff SASSOWER's subsequent phone messages for Chair Young's chief of staff, reiterating her requests for two slots: one for testimony in opposition to the Judiciary budget,

[6] The letter is Exhibit 8 to plaintiffs' verified supplemental complaint.

and the other for testimony in opposition to the Legislature's budget, Chair Young's chief of staff did not return her calls. Even the day before the hearing, in response to plaintiff SASSOWER's phone call, there was no return call informing her that she had not been included on the witness list – nor inviting her to submit written testimony for posting on the Legislature's webpage(s) for the hearing, accessible to the public, to legislators, and made part of the record. Nor did Chair Young's chief of staff call plaintiff SASSOWER, following the hearing, in response a further phone message from plaintiff SASSOWER.

283. The foregoing (¶¶278-283) is recounted in plaintiff SASSOWER's February 18, 2016 letter to Senate Finance Committee Chair Young and Ranking Member Liz Krueger and to Assembly Ways and Means Committee Chair Farrell and Ranking Member Bob Oaks (Exhibit 46). Entitled "Your Violation of Legislative Law §32-a with Respect to the Judiciary and Legislative Budgets for Fiscal Year 2016-2017 – and Budget Bill #S.6401/A.9001", it requested that they "advise as to what [their] criteria was for deciding which members of the public would be permitted to testify at the February 4, 2016 budget hearing on 'public protection'", further stating:

> "Suffice to say that quite apart from your direct knowledge – from past years – of the serious and substantial nature of what I would be saying, you had a succession of correspondence from me, spanning from my January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie to my February 3, 2016 'Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie'. From these you could easily discern that my intended testimony at the February 4, 2016 budget hearing:
>
> > (1) in opposition to the 'force of law' judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation;
> >
> > (2) in opposition to the Judiciary budget; and
> >
> > (3) in opposition to the Legislative budget
>
> was dispositive of unlawfulness, unconstitutionality and fraud." (Exhibit 46, p. 3).

284. Plaintiff SASSOWER's February 18, 2016 letter asked whether they had forwarded to ALL members of the fiscal committees and of the other relevant committees – the Judiciary Committees, the Senate Committee on Investigations and Government Operations, and the Assembly Committee on Governmental Operations – her various e-mailed correspondence, as had been requested.

285. Noting that the first witness at the February 4, 2016 "public protection" budget hearing was Chief Administrative Judge Marks, testifying in support of the Judiciary's budget and for an added $27 million – or, at least $16.7 million – to fund the first phase of the judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation – the letter pointed out that none of the legislators at the hearing asked Chief Administrative Judge Marks a single question reflective of any of that correspondence, including plaintiff SASSOWER's February 2, 2016 e-mail of "Questions for Chief Administrative Judge Marks".

286. In pertinent part, plaintiff SASSOWER's February 18, 2016 letter stated:

> "my 'Questions for Chief Administrative Judge Marks' were largely about number-crunching – beginning with the cumulative dollar total of the Judiciary's budget – and certification of those amounts. As stated in my preface to the 'Questions':
>
> 'Examination of the Judiciary's proposed budget
> for fiscal year 2016-2017 must begin with its total cost,
> especially as it is not contained within the budget –and the Governor's
> Commentary, his Division of the Budget website, and
> the Legislature's 'White', 'Blue', 'Yellow' and 'Green' Books
> diverge as to the relevant figures.'
>
> Tellingly, Chief Administrative Judge Marks did not identify the total cost of the Judiciary's proposed budget in his oral testimony – or in his largely identical written testimony. Yet none of the legislators commented upon this. The closest any came to inquiring about total cost was Senator Bonacic by his sham first question: 'Your budget, I think for court administration, is between 2.8 and 2.9 billion, would I be correct?' (video, at 13:50 mins.) – a

question so imprecise as to allow tens of millions of taxpayer dollars to be unaccounted for.

As for the $27 million dollars that Chief Administrative Judge Mark identified as the cost of the 'first phase-in of the judicial salary increase, beginning on April 1st of this year' (written testimony, at p. 5), not a single legislator questioned him about it – although #22 of my 'Questions for Chief Administrative Judge Marks' furnished the question, ready-made:

> 'As for the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report, where did it get the figure of 'approximately $26.5 million' for the first phase of its judicial salary increase? Did the Judiciary furnish that estimate and does such cost projection include all covered judges and the additional costs that result from non-salary benefits, such as pensions and social security, whose costs to the state are derived from salary?'

Of course, the most important question relating to the Commission on Legislative, Judicial and Executive Compensation was my Question #20:

> 'Is the Commission's December 24, 2015 Report in conformity with the commission statute, and is it substantiated by <u>any</u> finding, let alone evidence, as to the inadequacy of compensation and non-salary benefits? Where are your findings of fact and conclusions of law with respect to the particularized showing, made by the non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), in correspondence furnished to Chief Judge DiFiore and yourself in advance of this hearing, that the December 24, 2015 report is statutorily-violative, fraudulent, and unconstitutional – and that the ONLY recommendation that the Commission could lawfully make was 'for the nullification/voiding of the [Commission on Judicial Compensation's] August 29, 2011 Report AND a 'claw-back' of the $150-million-plus dollars that the judges unlawfully received pursuant thereto'?" (Exhibit 46, p. 9, underlining and capitalization in original).

287. The letter detailed that Chief Administrative Judge Marks' testimony was replete with fraudulent concealment and "outright LYING" with respect to the judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation. Yet, here, too, not a single legislator raised any question, even though plaintiffs' correspondence had furnished the evidence-supported specifics with which to do so. To the contrary, there was:

"only acceptance, where not support, of the Commission and its recommended judicial salary increases, whose statutory-violations, fraudulence, and unconstitutionality was comprehensively detailed by the correspondence I had furnished [to the chairs and ranking members of the fiscal committees], beginning on January 15th – and to the Senate Judiciary Committee four days earlier in support of my request to testify at its January 20, 2016 hearing to confirm Chief Judge DiFiore as this state's highest judge…." (Exhibit 46, p. 12).

288. As for the Legislature's own budget, the February 18, 2016 letter stated:

"neither Temporary Senate President Flanagan, Assembly Speaker Heastie, nor anyone on their behalf, appeared to testify in support – and you refused to allow me to testify in opposition. This, where my 'Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie' exposed constitutional and other infirmities, creating a slush fund, evident from the preface to those 'Questions', itself posing three questions:

'Examination of the Legislature's proposed budget for fiscal year 2016-2017 must begin with inquiry as to whether it is 'certified' 'itemized estimates of financial needs of the legislature', as Article VII, §1 of the New York State Constitution requires. Where are the 'General State Charges'? – and what about the tens of millions of dollars in untallied legislative reappropriations that are not part of the Legislature's proposed budget, but which the Governor's Legislative/Judiciary Budget Bill #S.6401/A.9001 includes in an out-of-sequence section at the back?'" (Exhibit 46, p. 13).

289. Based upon this recitation, the February 18, 2016 letter closed, as follows:

"<u>There is only one conclusion that can be drawn from what transpired at the February 4, 2016 non-hearing on the Legislative budget and sham hearing on the Judiciary budget–and from your non-responsiveness and that of every legislative recipients to whom I e-mailed my correspondence from January 15th to February 3rd or to whose staff I spoke by phone, apprising them of the issues and the correspondence.</u> That inescapable conclusion is that individually and collectively you are embarked upon yet another 'grand larceny of the public fisc' for the upcoming fiscal year with respect to the newest round of judicial salary increases and the slush-fund Judiciary and Legislative budgets, paralleling your 'grand larceny of the public fisc' in prior fiscal years with respect to the first round of judicial salary increases and the slush-fund Judiciary and Legislative budgets.

> If this conclusion is incorrect, then prove it by discharging your duty to come forward with findings of fact and conclusions of law with respect to those matters about which you reasonably knew I would have testified at the February 4, 2016 'public protection' budget hearing – had I been permitted to testify:
>
> (1) the showing made by my January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie, including by its most important three enclosures: my 'Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc.', my December 31, 2015 letter to Chief Judge Nominee DiFiore, and the sponsors' memo to Assembly Bill #7997, that the judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation are statutorily-violative, fraudulent, and unconstitutional;
>
> (2) the showing made by my January 28, 2016 letter to you and the January 26, 2016 letter to Chief Judge DiFiore it enclosed;
>
> (3) my 'Questions for Chief Administrative Judge Lawrence Marks';
>
> (4) my 'Questions for Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie'". (Exhibit 46, pp. 13-14).

290. The letter requested that such findings of fact and conclusions of law be furnished by February 25, 2016 – noting that this was "also…more than enough time" for the letter to be added to the Senate and Assembly webpages of written statements/testimonies for the February 4, 2016 "public protection" budget hearing so that it would be "accessible to members of the public and other legislators and be part of the record." (Exhibit 46, p. 14).

291. The factual recitation set forth in plaintiff SASSOWER's February 18, 2016 letter, including its enclosed "Summary/Analysis of the Governor's Commentary, of his Division of the Budget webpages of the Legislative and Judiciary Budgets, & of the Legislature's 'Color Books'" (Exhibit 47), is true and correct in all material respects.

292. Likewise, true and correct in all material respects is the referred-to correspondence, upon which the letter requested "findings of fact and conclusion of law:

- Plaintiffs' January 15, 2015 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie (Exhibit 39) – which is true and correct in all material respects, including:

  Its enclosed December 31, 2015 letter to Chief Judge Nominee DiFiore (Exhibit) – which is true and correct in all material respects;

  Its enclosed January 11, 2016 e-mail to Senate Judiciary Committee counsel (Exhibit 38) – which is true and correct in all material respects;

  Its enclosed introducers' memo to Assembly Bill #7997 (Exhibit 34) – which is true and correct in all material respects;

  Its enclosed "Statement of Particulars in Further Support of Legislative Override of the 'Force of Law' Judicial Salary Increase Recommendations, Repeal of the Commission Statute, Etc." (Exhibit 40) – which is true and correct in all material respects;

- Plaintiffs' January 28, 2016 letter to the chairs and ranking members of the Senate and Assembly fiscal and judiciary committees (Exhibit 42) – which is true and correct in all material respects;

  Its enclosed January 26, 2016 letter to Chief Judge DiFiore (Exhibit 41) – which is true and correct in all material respects;

- Plaintiffs' "Questions for Chief Administrative Judge Lawrence Marks" (Exhibit 44) – which is true and correct in all material respects;

- Plaintiffs' "Questions for Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie" (Exhibit 45) – which is true and correct in all material respects.

293. The following day, by a February 19, 2016 coverletter entitled "Preventing Yet Another 'Grand Larceny of the Public Fisc", Plaintiff SASSOWER sent her February 18, 2016 letter to the chairs and ranking members of the Senate and Assembly Judiciary Committees and to the chairs and ranking members of the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations (Exhibit 48). Identifying that their committees were:

> "the 'appropriate' ones with respect to the Judiciary and Legislative budgets – and with respect to the "force of law" judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation's December 24, 2015 Report",

the letter stated that the questions asked of the chairs and ranking members of the fiscal committees were also properly asked of them, *to wit*,

> "Did you furnish my e-mails pertaining to the February 4, 2016 'public protection' budget hearing to ALL members of your committees, as those e-mails requested, and as I further requested in follow-up phone calls to your staff. And if not, why not?"

Additionally, it asked:

> "what are your findings of fact and conclusions of law with respect to those e-mails and the other correspondence I sent you from January 15th onward, all demonstrating that the latest round of judicial salary increases and this year's Judiciary and Legislative budgets, combined in the Governor's materially discrepant Budget Bill #S.6401/A.9001, are statutorily-violative, unconstitutional, and fraudulent",

294. Plaintiff SASSOWER also requested responses by February 25, 2016.

295. Upon information and belief, defendants did not respond, as plaintiffs received no responses.

296. Plaintiffs also received no response to their January 28, 2016 letter to defendants FLANAGAN, HEASTIE, Senate Minority Leader Stewart-Cousins, and Assembly Minority Leader Kolb entitled "To Which Committee(s) Have You Assigned Oversight of the December 24, 2015 Report of the Commission on Legislative, Judicial & Executive Compensation – and the Legislature's Duty to Not only Override its Judicial Salary Increase Recommendations, but to Repeal the Commission Statute, etc." (Exhibit 43). Upon information and belief, defendants did not respond.

297. Instead, on March 14, 2016, amidst declarations by legislative leaders about restoring public trust, describing the fiscal committees' budget review as an "extraordinarily transparent

process" with "95 hours of budget hearings", defendants SENATE and ASSEMBLY each passed resolutions, essentially on party lines, embodying proposals of their respective political majority party/coalition conferences, determined behind-closed-doors (Exhibit 31).

298. Identically to the past two years, defendant SENATE's resolution omitted any reference to Legislative/Judiciary Budget Bill #S.6401, as well as the debt service bill (#S.6402), in reciting the numbers of eight other budget bills as comprising the "Executive Budget submission" (Exhibit 31-a). Purporting that the Senate Finance Committee had "conducted an extensive study and review", the resolution buried within its incorporated "Report on the Amended Executive Budget", a single reference to Budget Bill #S.6401:

> "JUDICIARY
> Legislature and Judiciary (S.6401)
> * the Senate modifies the Office of Court Administration to fund necessary increases for judicial salaries." (p. 29).

299. Identically to the past two years, defendant ASSEMBLY's resolution included Legislative/Judiciary Budget Bill #A.9001 among the ten bills it enumerated as comprising the "Executive Budget submission" (Exhibit 31-c). However, like the Senate majority party/coalition proposal, the Assembly majority party proposal pertained only to the Judiciary, notwithstanding it was featured in a section entitled "Legislature and Judiciary". Among its recommendations:

> "In keeping with the findings of the New York State Commission on Legislative, Judicial, and Executive Compensation, the Assembly proposal includes $27.2 million to fully support the first phase of a multi-year adjustment in salary for members of the New York State judiciary." (Exhibit 31-d at 70-1).

300. In fact, the Commission's finding was that the first phase of the judicial salary increase would be "approximately $26.5 million for the next fiscal year" (December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation, at p. 6), which, at the

February 4, 2016 "public protection" budget hearing, morphed into a request by Chief Administrative Judge Marks for $27 million.

CAUSES OF ACTION

AS AND FOR A NINTH CAUSE OF ACTION

The Legislature's Proposed Budget for Fiscal Year 2016-2017, Embodied in Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

301. Plaintiffs repeat, reiterate, and reallege ¶¶1-300 with the same force and effect as if more fully set forth herein – and, specifically, their "Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie", transmitted by a February 3, 2016 e-mail (Exhibit 45).

302. The Legislature's proposed budget for fiscal year 2016-2017 is identical to the Legislature's proposed budget for fiscal years 2015-2016 and 2014-2015, embodied in the Governor's Legislative/Judiciary budget bills for those years. As such, it suffers from the same unconstitutionality, unlawfulness, and fraudulence as set forth by the first cause of action of plaintiffs' verified complaint (¶¶76-98), reiterated and reinforced by the fifth cause of action of their verified supplemental complaint (¶¶169-178).

303. Once again, the Legislature's proposed budget is unconstitutional, *on its face*. Neither the December 1, 2015 coverletter nor its transmitted content (Exhibits 24-d, 24-e) make any claim that it is "itemized estimates of the financial needs of the legislature", as Article VII, §1 expressly requires. Nor do they purport to be "certified by the presiding officer of each house", as Article VII, §1 expressly requires.

304. As previously stated (¶82), "It is to prevent fraud and larceny of taxpayer monies that Article VII, §1 requires that the Legislature's 'itemized estimates' of 'financial needs' be 'certified by the presiding officer of each house' – just as it requires the Judiciary's 'itemized estimates' of its

'financial needs' be 'approved by the court of appeals and certified by the chief judge of the court of appeals'.

305. That Article VII, §1 does not lay out any procedure by which the Legislature and Judiciary are to ascertain their 'itemized estimates', which it does for the Executive branch, reinforces the importance of certification.

306. Further establishing that the Legislature's proposed budget, *on its face*, is not "itemized estimates of the financial needs of the legislature" is that: (a) it is missing "General State Charges"; and (b) its budget figures are identical to those of the Legislature's budgets for the past six past fiscal years – reflecting that they are the product of manipulation.

307. Identically to the past two years, defendants SENATE and ASSEMBLY have no records reflecting the process/procedure by which the Legislature's budget for fiscal year 2016-2017 was compiled (Exhibit 53).

308. Identically to the past two years, there was no cognizable process by which the Legislative budget was compiled.

309. Article VII, §1 does not vest the Temporary Senate President and Assembly Speaker with power to themselves determine the "itemized estimates of the financial needs of the legislature", but only to certify same. Implicitly, that power is vested in "the appropriate committees of the legislature". As pointed out by plaintiffs more than two years ago (¶88):

> "…it should be obvious that the reason Article VII, §1 requires that the Judiciary's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', in addition to the Governor, but does not require that the Legislature's 'certified' 'itemized estimates' of its 'financial needs' be transmitted to 'the appropriate committees of the legislature', is because 'the appropriate committees of the legislature are presumed to have formulated the 'itemized estimates' that the 'presiding officer of each house' have 'certified'."

310. No provision of the Constitution and no statute or rules of the Senate or Assembly vest the Temporary Senate President and Assembly Speaker with the power that defendants FLANAGAN and HEASTIE have seemingly arrogated to themselves.

311. Nor would "appropriate committees of the legislature" craft such a budget as defendants FLANAGAN and HEASTIE transmitted to defendant CUOMO – one whose lump-sum, "slush-fund" appropriations give them a free hand in financially rewarding members and legislative committees who follow their dictates and punishing those who do not.

312. In addition to being unconstitutional *on its face, as written*, the Legislature's budget for fiscal year 2016-2017 is unconstitutional *as applied*, as demonstrated by their implementation of past legislative budgets, especially the many years of identical budgets.

313. Upon information and belief, defendants FLANAGAN and HEASTIE have followed in their predecessors' footsteps: using the lump sum appropriations of the Legislature's budget as their most powerful tool to dominate members and committees and deprive them of their "financial needs" for discharging their constitutional duties, and for discharging them with independence.

314. Plaintiffs' first-hand interaction with defendants SENATE and ASSEMBLY pertaining to the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation and to the Judiciary and Legislative budget for fiscal year 2014-2015 – much of it evidenced by written correspondence (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52, 53, 54) – establishes that these defendants, by their "appropriate committees" and by their members, are not functioning in any manner remotely consistent with their constitutional duties.

315. As previously stated (¶94):

> "In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and

> 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature's own budget, throwing asunder the constitutional command: 'itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house'".

316. Once again, defendant CUOMO has abetted this constitutional defiance – including by not even furnishing a recommendation on the Legislature's budget that he sends back to it "without revision".

AS AND FOR A TENTH CAUSE OF ACTION

The Judiciary's Proposed Budget for 2016-2017, Embodied in Budget Bill #S.6401/A.9001, is Unconstitutional & Unlawful

317. Plaintiffs repeat, reiterate, and reallege ¶¶1-316 with the same force and effect as if more fully set forth herein – and, specifically, their "Questions for Chief Administrative Judge Marks", transmitted by their February 2, 2016 e-mail (Exhibit 44).

318. The Judiciary's proposed budget for fiscal year 2016-2017, embodied by Budget Bill #S.6401/A.9001, is materially identical to the Judiciary's proposed budget for fiscal years 2014-2015 and 2015-2016, embodied by the Governor's Legislative/Judiciary budget bills for those years. As such, it suffers from the same unconstitutionality, unlawfulness, and fraudulence as set forth by the second cause of action of plaintiffs' verified complaint (¶¶99-108), reiterated and reinforced by the sixth cause of action of plaintiffs' supplemental verified complaint (¶¶179-193).

319. Identical to the Judiciary's proposed budget for the past two fiscal years, defendant CUOMO, his Division of the Budget, and defendants SENATE and ASSEMBLY are unable to comprehend the Judiciary's proposed budget for fiscal year 2016-2017 on its most basic level: its cumulative dollar amount and its percentage increase over the Judiciary's budget for the current

fiscal year. As stated at the outset of plaintiffs' "Questions for Chief Administrative Judge Marks" (Exhibit 44), they diverge as to relevant figures and percentages:

A. Defendant CUOMO's "Commentary of the Governor on the Judiciary" (Exhibit 79-a):

> "The Judiciary has requested appropriations of $2.13 billion for court operations, exclusive of the cost of employee benefits. As submitted, disbursements for court operations from the General Fund are projected to grow by $44.4 million or 2.4 percent."

B. Defendant CUOMO's Division of the Budget website, which defers to text furnished by Judiciary (Exhibit 29-a):

> "The Judiciary's General Fund Operating Budget requests $1.9 billion, excluding fringe benefits, for Fiscal Year 2016-2017. This represents a cash increase of $44.4 million, or 2.4%. The appropriation request is $1.9 billion, which represents a $43.4 million, or 2.3%, increase.
>
> …
>
> The Judiciary's All Funds budget request for Fiscal Year 2016-2017, excluding fringe benefits, totals $2.13 billion, an appropriation increase of $48.3 million or 2.3% over the 2014-2015 All Funds budget…"

C. Senate Majority's "White Book", under Senate Finance Committee Chair Young's auspices (Exhibit 29-b):

> "The FY 2017 Executive Budget proposes All Funds spending of $2.9 billion, an increase of $112.2 million, or 4.1 percent." (p. 91). This is further particularized by a chart representing this as "Proposed Disbursements – All Funds": $2,865,600,000 – representing a change of $112,224.000 and a percentage of 4.08% (p. 93).
>
> "the Judiciary's proposed budget would increase general fund cash spending by $44.4 million, or 2.4 percent".

D. Senate Minority's "Blue Book", under Senate Finance Committee Ranking Member Krueger's auspices (Exhibit 29-c):

> "The Judiciary proposed Budget is $2.13 billion, an increase of $48.2 million or 2.3% from the SFY 2015-2016 Enacted Budget…" (p. 179).

> This is further particularized by a chart as the "Executive Recommendation 2016-17": $2,132,526,345, the "$ change" as $48,254,307, and the "% Change" as 2.3% (p. 179).

E. Assembly Majority's "Yellow Book", under Assembly Ways and Means Committee Chair Farrell's auspices (Exhibit 29-d):

> "The Judiciary's proposed budget request recommends appropriations of $2.9 billion, which is an increase of $81.94 million or 2.9 percent from the State Fiscal Year (SFY) 2015-16 level." (p. 145).
>
> A table of "Appropriations" shows the "Exec Request", in millions, at "2,877.49" millions of dollars, representing a change of "81.94" millions of dollars with a percent change of "2.93'. A table of "Disbursements" shows an "Exec Request", in millions, at "2,865.60" millions of dollars, representing a change of "112.23" millions of dollars, for a percent change of "4.08". (p. 145).

F. Assembly Minority's "Green Book", under Assembly Ways and Means Committee Ranking Member Oaks' auspices (Exhibit 29-e):

> "$2.1 billion for the Judiciary, $48.3 million more than last year. This represents a 2.3% increase in spending."
>
> "General State Charges: (Non-Salary) Benefits: $730 million for General State charges. $34 million more than last year. This pays for fringe benefits of employees of the court system, including all statutorily-required and collectively bargained benefits."

320. Plaintiffs now additionally challenge the constitutionality and lawfulness of the interchange provision appearing at §2 of the Judiciary's "single budget bill" (Exhibit 25-d) – and replicated, *verbatim*, in §2 of defendant CUOMO's Legislative/Judiciary Budget Bill #S.6401/A.9001[7] (Exhibit 27-b, p. 10). Such challenge is both *as written and as applied*.

321. Plaintiffs' challenge to the constitutionality of the interchange provisions, *as written,* begins with *Hidley v. Rockefeller*, 28 N.Y.2d 439, 447-449 (1971), wherein then Chief Judge Stanley Fuld, writing in dissent from the Court's decision addressed only to the issue of standing, stated:

[7] The same interchange provision identically appears at §2 of the Judiciary's "single budget bill" for the past two fiscal years, incorporated *verbatim* in defendant CUOMO's Legislative/Judiciary budget bills for those years.

> "…the provisions which permit the free interchange and transfer of funds are unconstitutional on their face…To sanction a complete freedom of interchange renders any itemization, no matter how detailed, completely meaningless and transforms a schedule of items or of programs into a lump sum appropriation in direct violation of Article VII of the Constitution. (underlining added).

322. *As written*, the interchange provision here at issue states:

> "Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts." (Exhibit 27-b, p. 10).

323. *As written*, the "notwithstanding any provision of law" language is vague and overbroad. The "law" includes the New York State Constitution – and such is unconstitutional, *on its face*, as no statute can override the Constitution.

324. At bar, the "notwithstanding any provision of law" language authorizes the Judiciary to violate New York State Constitution, Article VII, §1, §4, §6, and §7, which speak of "itemized estimates", "items of appropriations"; "stated separately and distinctly…and refer each to a single object or purpose"; made for "a single object or purpose", that are "particular" and "limited"; that "distinctly specify the sum appropriated, and the object or purpose to which it is to be applied" as well as Article IV, §7 pertaining to the Governor's line-item veto of "items of appropriations".[8]

325. Moreover, the "law" includes the very statute governing judiciary interchanges, Judiciary Law §215 – and there is no basis for *sub silentio* repudiating its careful statutory

[8] So, too, do the statutes pertaining to appropriations and reappropriations require specificity. See, also, State Finance Law §43, entitled "Specific appropriations limited as to use; certain appropriations to be specific": "Money appropriated for a specific purpose shall not be used for any other purpose, and the comptroller shall not draw a warrant for the payment of any sum appropriated, unless it clearly appears from the detailed statement presented to him by the person demanding the same as required by this chapter, that the purposes for which such money is demanded are those for which it was appropriated…"

restrictions and safeguards, other than to accomplish what both the statute and Constitution proscribe.

326. Judiciary Law §215(1), entitled "Special provisions applicable to appropriations made to the judiciary in the legislature and judiciary budget", states:

> "1. The amount appropriated for any program within a major purpose within the schedule of appropriations made to the judiciary in any fiscal year in the legislature and judiciary budget for such year may be increased or decreased by interchange with any other program within that major purpose with the approval of the chief administrator of the courts who shall file such approval with the department of audit and control and copies thereof with the senate finance committee and the assembly ways and means committee except that the total amount appropriated for any major purpose may not be increased or decreased by more than the aggregate of five percent of the first five million dollars, four percent of the second five million dollars and three percent of amounts in excess of ten million dollars of an appropriation for the major purpose. The allocation of maintenance undistributed appropriations made for later distribution to major purposes contained within a schedule shall not be deemed to be part of such total increase or decrease.

327. Judiciary Law §215(1) restricts interchanges and their amounts to programs within the same "major purpose" – as to which the Chief Administrator's approval must be filed with "the department of audit and control and copies thereof with the state finance committee and the assembly ways and means committee". Such accords with statutory requirements, conditions, and procedures set forth in State Finance Law §51 entitled "Interchange of appropriations or items therein" and the statutory sections to which State Finance Law §51 refers in stating:

> "No appropriation shall be increased or decreased by transfer or otherwise except as provided for in this section or section fifty-three, sixty-six-f, seventy-two or ninety-three of this chapter, or article eight of the education law"[9]

328. In other words, *as written*, the interchange provision of §2 gives the Chief Administrator complete discretion to do whatever he wants, unbounded by any standard and by any

[9] State Finance Law §53, entitled "Special emergency appropriations"; State Finance Law §66-f, entitled "Certain interagency transfers authorized"; State Finance Law §72, entitled "General fund"; State Finance Law

reporting/notice requirement to the other two government branches. Such is unconstitutional and unlawful.

329. *As applied*, the interchange provision is unconstitutional and unlawful in that it creates a slush-fund and permits concealment of true costs. It has enabled the Judiciary to surreptitiously fund, in fiscal year 2013-2014, the second phase of the judicial salary increase recommended by the Commission on Judicial Compensation's August 29, 2011 Report, without identifying the dollar amount of such increase, and, in fiscal year 2014-2015, to even more surreptitiously fund the third phase of the judicial salary increase recommended by the Commission's August 29, 2011 Report, without even identifying the third phase.

330. The Judiciary's responses to legitimate FOIL requests about its use of the interchange provision in fiscal year 2015-2016 – and about the dollar costs of the Commission on Judicial Compensation's three-phase judicial salary increases, funded from reappropriations (Exhibits 50, 49) – only further reinforce the unconstitutionality of the interchange provision, *as applied*.

331. Should defendant CUOMO adhere to his Commentary, "…I expect that [the Judiciary] will again absorb the first year of recommended judicial salary increases within an overall spending level of 2 percent in the 2016-17 budget" (Exhibit 27-a), the Judiciary will presumably fund the first phase of the judicial salary increase recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation from the §3 reappropriations, *via* the §2 interchange provision.

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§93, entitled "Capital projects fund"; and Education Law §355(4)(c), "Powers and duties of trustees-

AS AND FOR AN ELEVENTH CAUSE OF ACTION

Budget Bill #S.6401/A.9001 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies "Without Revision"

332. Plaintiffs repeat, reiterate, and reallege ¶¶1-331, with the same force and effect as if more fully set forth herein.

333. Defendant CUOMO's Budget Bill #S.6401/A.9001 (Exhibit 27-b) includes tens of millions of dollars of reappropriations for the Legislature that were never part of the proposed budget for fiscal year 2016-2017 transmitted by the December 1, 2015 letter of defendants FLANAGAN and HEASTIE to defendant CUOMO (Exhibits 24-d, 24-e). This replicates, identically, what defendant CUOMO did by his Legislative/Judiciary budget bills for fiscal years 2014-2015 and 2015-2016, where he also included tens of millions of dollars in legislative reappropriations that were never part of the proposed legislative budgets for those fiscal years. As such, Legislative/Judiciary Budget Bill #S.6401/A.9001 suffers from the same unconstitutionality and unlawfulness, as set forth by the third cause of action of plaintiffs' verified complaint (¶¶109-112), reiterated and reinforced by the seventh cause of action of plaintiffs' supplemental verified complaint (¶¶179-193).

334. Plaintiffs' third and seventh causes of action (¶¶111-112, 201) asserted that absent defendants' response to "basic questions", the legislative reappropriations in those budget bills were unconstitutional and unlawful. The "basic questions" particularized were:

> "where these reappropriations came from, who in the Legislature, if anyone, certified that the monies proposed for reappropriations were suitable for that purpose; their cumulative total; and the cumulative total [of] the monetary allocations for the Legislature in Budget Bill #...".

335. This eleventh cause of action identically asserts that the 24 pages of legislative reappropriations in Legislative/Judiciary Budget Bill #S.6401/A.9001 (Exhibit 27-b) are

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administrative and fiscal functions. See, also: State Finance Law §50, "Transfers of appropriations".

unconstitutional and unlawful absent defendants' response to the same "basic questions", now pertaining to Legislative/Judiciary Budget Bill #S.6401/A.9001. It also expands these questions by the following from plaintiffs' "Questions for Temporary Senate President Flanagan and Assembly Speaker Heastie" (Exhibit 45) pertaining to the alterations in legislative reappropriations in the amended Legislative/Judiciary budget bills for the past two fiscal years:

> "(23) In March 2015, an amended Legislative/Judiciary Budget Bill for fiscal year 2015-2016 (#S.2001-a/A.3001-a) altered approximately 80 legislative reappropriations – most of which were reduced, sometimes dramatically. Is that correct? What was the dollar difference in the cumulative totals of the legislative reappropriations, before amended and after?
>
> (24) In March 2014, an amended Legislative/Judiciary Budget Bill for fiscal year 2014-2015 (#S.6351-a/A.8551-a) altered approximately 70 reappropriations – increasing them, decreasing them, and in at least two instances, adding on. Is that correct? What was the dollar difference in the cumulative totals of the legislative reappropriations, before amended and after?
>
> (25) Why were the legislative reappropriations changed for these two fiscal years – and by what process were they determined? Were these changed reappropriations certified? And by whom?
>
> (26) Why is it that the changed legislative reappropriations in Budget Bills #S.2001-a/A.3001-a and #S.6351-a/A.8551-a were not flagged by the safeguarding device identified on the first page of each bill by its pre-printed 'EXPLANATION – Matter in italics (underscored) is new; matter in brackets [ ] is old to be omitted'? And were such changes flagged in any amended introducer's memo, as required by Senate Rule VII, §4(b) and Assembly Rule III, §1(f) and §6?
>
> (27) Do you expect that the legislative reappropriations in Legislative/Judiciary Budget Bill #S.6401/A.9001 for fiscal year 2016-2017 will be changed? What will be the basis? By what process? Will these changed reappropriations be certified? By whom?"

AS AND FOR A TWELFTH CAUSE OF ACTION

Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards – and the Constitution

336. Plaintiffs repeat, reiterate, and reallege ¶¶1-335, with the same force and effect as if more fully set forth herein.

337. To date, defendant SENATE and ASSEMBLY's violations of statutory and rule safeguards with respect to Legislative/Judiciary Budget Bill #S.6401/A.9001 are identical to their violations two years ago with respect to the Legislative/Judiciary budget bill for fiscal year 2014-2015 – the subject of the fourth cause of action of plaintiffs' verified complaint (¶¶113-126) – and identical to their violations last year with respect to the Legislative/Judiciary budget bill for fiscal year 2015-2016 – the subject of the eighth cause of action of their verified supplemental complaint (¶¶203-236). The only difference between those causes of action and this is that this cause of action stops short of the full panoply of Senate and Assembly violations because it has been drafted at a point where those anticipated violations have not yet all occurred.

338. This twelfth cause of action, therefore, replicates – to the extent applicable – the fourth and eighth causes of action so as to apply them to Legislative/Judiciary Budget Bill #S.6401/A.9001.

339. Identically to the last two years, the Legislature has willfully and deliberately violated Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a), pertaining to fiscal notes, fiscal impact statements, and introducer's memoranda for Legislative/Judiciary Budget Bill #S.6401/A.9001 – made applicable by Senate Rule VII, §6 and Assembly Rule III, §2(g). If properly drawn, these would have provided:

(a) the cumulative dollar amount of the bill in its entirety;

(b) the cumulative dollar amount of the legislative portion, inclusive of General State Charges and reappropriations;

(c) the cumulative dollar amount of the judiciary portion, inclusive of General State Charges and reappropriations;

(d) the percentage increase of each cumulative dollar amount over the dollar amounts in last year's corresponding Legislative/Judiciary Budget Bill.

340. Identically to the last two years, defendants' violations of these Senate and Assembly rules are compounded by the fact that Legislative/Judiciary Budget Bill #S.6401/A.9001 contains NO cumulative dollar amount for the bill. Nor does it contain cumulative dollar amounts for its separate legislative and judiciary portions (Exhibit 27-b).

341. Identically to the last two years, defendant fiscal committee chairs and ranking members have not themselves furnished such information, notwithstanding it would have been publicly available had they complied with the mandate of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) for fiscal notes, fiscal impact statements, and introducer's memoranda, which was their duty to do (Exhibits 51, 52).

342. Equally true today, as it was last year and the year before with respect to the identical violations of these Senate and Assembly rules:

> "…defendant SENATE and ASSEMBLY have demonstrated their utter unconcern in imposing upon taxpayers the expense of two budgets – the Judiciary and Legislative budgets – whose dollar amount they do not know or will not reveal. Such is utterly unconstitutional." (¶118 of plaintiffs' fourth cause of action; ¶216 of plaintiffs' eighth cause of action).

343. The unconstitutionality of withholding from the public the dollar amounts of the Judiciary and Legislative budgets is reflected by the ENTIRE constitutional scheme for the budget, set forth in Article VII, §§1-7 and Article IV, §7, and reinforced by the multitude of statutes

pertaining thereto and by Senate and Assembly rules – ALL geared toward itemization and specifics as to cost.

344. Identically to the past two years, the Legislature has willfully and deliberately violated Legislative Law §32-a requiring the Senate Finance Committee and Assembly Ways and Means Committee to "provide individuals and organizations throughout the state with an opportunity to comment on the budget" – and to make "every effort" to do so. Once again, the chairs and ranking members of those committees made no "effort" to allow plaintiff SASSOWER to testify in opposition to the Legislature's proposed budget, to the Judiciary's proposed budget, and to defendant CUOMO's Legislative/Judiciary budget bill – #S.6401/A.9001.

345. Identical, too, is their reason: their knowledge that plaintiff SASSOWER's opposition testimony is dispositive as to the unconstitutionality, unlawfulness, and fraudulence of the budgets of the Legislature and Judiciary and of defendant CUOMO's materially deviant Legislative/Judiciary Budget Bill #S.6401/A.9001, concealing relevant dollar costs, both cumulative and by itemizations and lump-sums which they themselves cannot comprehend. This is the same reason why, identically to the past two years, they have not included plaintiffs' February 18, 2016 letter in their webpage record of their "public protection" budget hearing, as that letter expressly requested (Exhibit 46, p. 14).

346. Identically to the past two years, the fiscal committees have again effectively subverted Legislative Law §32-a by combining the public's hearings on the budget required by Legislative Law §32-a with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31 for the testimony of the Governor, Executive branch

agency heads, and the like.[10] Their combined budget hearings – which they organize by "programmatic areas" – are filled with testimony from officials and recipients of budgetary appropriations. The public's testimony is shoved to the end – or, if dispositive of the unlawfulness and unconstitutionality of the budget, as at bar, shut out entirely on the pretext that the hearing is full or, as this year, just shut out.

347. Exacerbating this subversion of Legislative Law §32-a is that, identically to the past two years, the fiscal committees: (a) did not schedule any of the public's budget hearings 'regionally', as the statute contemplates; (b) assigned the Judiciary's budget to the 'programmatic area' of 'public protection', as if the Judiciary were an executive agency, rather than, as it is, a separate branch of government; (c) failed to actually assign the Legislature's budget to "public protection" or any other "programmatic area".

348. Identically to the past two fiscal years, the fiscal committee chairs and ranking members never intended to examine the Legislature's budget for fiscal year 2016-2017 at the "public protection" budget hearing, did not examine it at that budget hearing and, in violation of Legislative Law §32-a, held no hearing at which plaintiff SASSOWER or any other member of the public could be heard with respect to the Legislature's budget for fiscal year 2016-2017.

349. Underlying this recurring violation of Legislative Law §32-a with respect to the Legislature's own budget and the Legislative/Judiciary budget bill encompassing it is the legislative leaders' direct self-interest in perpetuating the constitutional, statutory, and rule violations that make the legislative budget a "slush fund" from which they can monopolize power at the expense of rank-and-file members and functioning committees.

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[10] Further reinforcing that the public's hearings are to be separate from the hearings for department heads and divisions is Legislative Law §53 and §54-a which separately list them in the "schedule for the specific budget-related actions of each house". *See* ¶360, *infra*.

350. Self-interest is also the reason why, in violation of Senate Rule VIII, §4(c) and Assembly Rule IV, §1(d) requiring committee oversight, the Legislature, from its leadership, to its committee heads, to its rank and file members refuse to effect oversight over the Commission on Legislative, Judicial and Executive Compensation, its "force of law" judicial salary increase recommendations, and the Commission statute. Doing so would undermine their easy path to their own salary increases *via* the Commission.

351. The non-function and dysfunction of defendants SENATE and ASSEMBLY committees – and of defendants SENATE and ASSEMBLY as a whole – described and documented by plaintiffs' verified complaint and verified supplemental complaint – is manifested, now again, in this budget cycle, proven by the complete absence of ANY response from the Legislature's leadership, from its committee chairs and ranking members, and from rank-and-file members to plaintiffs' correspondence pertaining to the statutory violations, fraud, and unconstitutionality of the judicial salary increases that will take effect automatically on April 1, 2016 and pertaining to the unconstitutional and fraudulent Judiciary and Legislative budgets and materially-discrepant Legislative/Judiciary Budget Bill #S.6401/A.9001 (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 51, 52).

352. In the six and a half weeks since the fiscal committees' February 4, 2016 "public protection" budget hearing, there has been no committee action on Legislative/Judiciary Budget Bill #S.6401/A.9001, pursuant to Senate Rule VIII, §§3, 4, 5 and Assembly Rule IV, §§2, 4, 6, which mandate public meetings, recorded votes, committee reports, with amendments following procedures set forth, *inter alia*, by Senate Rule VII, §4(b); and Assembly Rule III, §§1(f) and 6.

353. Identically to the last two years, defendants SENATE and ASSEMBLY have dispensed with any committee deliberation and any committee vote on Legislative/Judiciary Budget

Bill #S.6401/A.9001 by any of the Legislature's "appropriate committees", *to wit*, in the Senate: (i) the Senate Finance Committee; (ii) the Senate Judiciary Committee; (iii) the Senate Committee on Investigations and Government Operations; in the Assembly: (i) the Assembly Ways and Means Committee; (ii) the Assembly Judiciary Committee; (iii) the Assembly Committee on Government Operations; (iv) the Assembly Committee on Oversight, Analysis, and Investigation.

354. Upon information and belief, defendants SENATE and ASSEMBLY have also dispensed with any committee deliberations and any committee votes on any of defendant CUOMO's executive budget. These are his four other appropriation budget bills:

(1) State Operations (#S.6400/A.9000);
(2) Debt Service (#S.6402/A.9002);
(3) Aid to Localities (#S.6403/A.9003);
(4) Capital Projects (#S.6404/A.9004);

and his five proposed "Article VII bills":

(1) Public Protection and General Government (S.6405/A.9005);
(2) Education, Labor and Family Assistance (S.6406/A.9006);
(3) Health and Mental Hygiene (S.6407/A.9007);
(4) Transportation, Economic Development and Environmental Conservation (S.6408/A.9008);
(5) Revenue (S.6409/A.9009).[11]

355. Upon information and belief, defendants SENATE and ASSEMBLY have also dispensed with any deliberations and any votes on the Senate and Assembly floor with respect to any of these ten budget bills, including the Legislative/Judiciary Budget Bill #S6401/A.9001.

356. With the exception of Legislative/Judiciary Budget Bill #S6401/A.9001 and the Debt Service Budget Bill #S.6402/A.9002, the other eight budget bills have each been amended, twice (Exhibits 30-a, 30-b).[12]

[11] Defendant CUOMO has also submitted two "freestanding Article VII bills": (1)Pension Forfeiture Concurrent Resolution (S.6410/A.9010) and (2) Good Government and Ethics Reform (S.6411/A.9011).

357. The first set of amendments was apparently defendant CUOMO's 30-day amendments when all eight budget bills were amended on the same day, February 16, 2016 – and in a fashion producing no differences in the Senate and Assembly versions of the same budget bills.

358. The second set of amendments also took place in unison. On March 11, 2016, the eight Assembly budget bills were amended. The next day, March 12, 2016, the corresponding eight Senate budget bills were amended. Yet by whom these amendments were introduced, where, why, and by what vote they were approved is a mystery – especially as neither the Senate nor Assembly were in session on those two days, which were a Friday and a Saturday (Exhibit 30-c). According to Assembly webpages for each of the eight Senate bills and each of the eight Assembly bills: "There are no votes for this bill in this legislative session" and "memo not available". As such, these amendments appear to be non-amendments, as they are utterly fraudulent.

359. Identically to the past two years, in lieu of committee and floor discussion, debate, amending, and voting on defendant CUOMO's budget bills, defendants FLANAGAN and HEASTIE promulgated a Joint Legislative Budget Schedule that deferred "Senate and Assembly Budget Actions" to March 14, 2016 (Exhibit 28-b).

360. Identically to the last two years, their Joint Legislative Budget Schedule does not reveal that it is mandated by statute, Legislative Law §53 and §54-a, and by a legislative rule based thereon, Senate and Assembly Permanent Joint Rule III – thereby concealing its violations thereof:

- In violation of Legislative Law §53 and §54-a, the Joint Legislative Budget Schedule did not include dates for the Legislature's two different sets of hearings on the budget – which, as these two statutes reflect, are to be separate: the public is to have its own hearings pursuant to Legislative Law §32-a and the department and division heads to have hearings of their own pursuant to Article VII, §3 of the New York State Constitution and Legislative Law §31.

[12] The Pension Forfeiture Concurrent Resolution (S.6410/A.9010) and Good Government and Ethics Reform bill (S.6411/A.9011) – neither of which the Senate and Assembly have included in the recitation of budget bills in their resolutions – have also not been amended.

- In violation of Legislative Law §54-a and Senate and Assembly Permanent Joint Rule III, the Joint Legislative Budget Schedule did not provide for the convening of a Joint Budget Conference Committee within ten days "after submission of the budget by the governor pursuant to article seven of the constitution" – as those provisions mandate. Rather, it did not schedule the Joint Budget Conference Committee until March 15 – this being the identified date the "Joint Senate & Assembly Budget Conference Committees Commence".

361. The requirement of Legislative Law §54-a[13] and Permanent Joint Rule III that the Joint Budget Conference Committee and subcommittees be established "within ten days following the submission of the budget by the Governor pursuant to article VII of the constitution" – which, this year, would have been by January 23, 2016 – is so that they can promptly become operational and do what conference committees are supposed to do – and what both the statute and rule identify as their function: to reconcile different versions of budget bills and resolutions passed by the two legislative houses.

362. The failure of defendants FLANAGAN and HEASTIE to timely establish the Joint Budget Conference Committee and subcommittees is a statutory and rule violation of constitutional magnitude – since Article VII, §4 unequivocally states:

> "…an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV." (underlining added).

[13] Legislative Law §54-a., entitled "Scheduling of legislative consideration of budget bills" – the source of Permanent Joint Rule III – begins, as follows:

> "The legislature shall by concurrent resolution of the senate and assembly prescribe by joint rule or rules a procedure for:
>
> 1. establishing a joint budget conference committee or joint budget conference committees within ten days following the submission of the budget by the governor pursuant to article seven of the constitution, to consider and reconcile such budget resolution or budget bills as may be passed by each house…"

363. In other words, achieving an "on time" state budget is largely in the control of defendants SENATE and ASSEMBLY. Pursuant to Article VII, §4, once their two houses agree as to the items of appropriations to be stricken or reduced in defendant CUOMO's four appropriation bills other than the Legislative/Judiciary budget bill– which is what the conference committees should be brokering, based on amended bills – these bills each become "law immediately, without further action by the governor".

364. This year, identically to the past two years, defendants FLANAGAN and HEASTIE have foisted materially false and misleading resolutions on defendants SENATE and ASSEMBLY on the pretense that such are necessary to commence the conference committee process. The true purpose of these resolutions is to have their respective houses adopt policy positions and agendas that are the product of the closed-door majority political conferences of each house: in the Senate, of the Republican Conference in coalition with the Independent Democratic Conference; and in the Assembly, of the Democratic Conference.

365. As these majority political conferences – as well as the minority political conferences – are closed to the public because defendants SENATE and ASSEMBLY exempted them from the requirements of the Open Meetings Law [Public Officers Law, Article VII, §108.2], they violate Article III, §10 of the New York State Constitution: "Each house of the legislature shall keep a journal of its proceedings, and publish the same.... The doors of each house shall be kept open…" as well as the Legislature's own rules pursuant thereto: Senate Rule XI, §1 "The doors of the Senate shall be kept open" and Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public". They are unconstitutional,

as are their budget proposals by reason thereof. "*Albany's Dysfunction Denies Due Process*", 30 Pace L. Rev. 965 (2010), Eric Lane, Laura Seago.[14]

366. The budget proposals of these political conferences are unconstitutional for a further reason. They violate Article VII.

367. The Senate's resolution, adopted March 14, 2016, itself concedes this Article VII violation, stating:

> "WHEREAS, Article VII of the New York State Constitution provides the framework under which the New York State Budget is submitted, amended and enacted. The New York State Courts have limited the Legislature in how it may change the appropriations bills submitted by the Governor. The Legislature can delete or reduce items of appropriation contained in the several appropriation bills submitted by the Governor in conjunction with the Executive Budget, and it can add additional items of appropriation to those bills provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose; and
>
> WHEREAS, An extensive study and review of the Governor's 2016-2017 Executive Budget submission has revealed that the construction of the budget bills submitted to the Legislature by the Governor constrains the Legislature in its ability to fully effectuate its intent in amending the Governor's budget submission; and
>
> …
>
> WHEREAS, The Legislature has amended the Governor's 2016-2017 Executive Budget submission to the fullest extent possible within the authority provided to it pursuant to Section 4 of Article VII of the New York State Constitution; and

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[14] *See, in particular*, pp. 992: "the court should declare unconstitutional the provision of the Open Meetings law that allows for the discussion of public business in the privacy of legislative political conferences"; and pp. 997-998:

> "the fundamental problem with New York's legislative process is the domination by majority leadership.[fn] Such domination requires both committees and chamber consideration to be moribund, but leaders need some forum for communicating with members. This is the purpose of the closed, unrecorded, political conferences, most importantly those held by the majority party, which are typically led by the chamber leader. It is in these conferences—and only in these conferences—that bills are presented, discussed in earnest, and voted on. Without a majority vote of the majority party, no bill goes to the floor for final consideration. Conversely, virtually every bill that goes to the floor is passed.[fn] The conferences' privacy is to cover the fact that the discussions concern the politics of bills and not their substance…."

> WHEREAS, The Senate, in addition to the Governor's 2016-2017 Executive Budget submission bills as amended by the Senate in the above referenced legislative bills, does hereby provide its recommendations as to provisions in the Governor's 2016-2017 Executive Budget submission which reflect those items the Senate is constrained from effectuating as amendments to the 2016-2017 Executive Budget appended hereto" (Exhibit 31-a).

368. This Senate resolution is virtually identical to its resolutions of the past two years. Except for the difference in the fiscal year and budget bill numbers, the only material difference is a single sentence in the specifying paragraph:

> "WHEREAS, The 2016-2017 Executive Budget includes funds for new programs throughout various agencies which are direct aid and grant programs, have been drafted as lump sum appropriations and are proposed to be distributed at the sole discretion of the Executive. In addition, some of these proposed initiatives related to capital plans have no corresponding plan details, which is imperative for proper consideration of these proposals. New capital spending, distributed through regional economic development councils, is also included in the Executive proposals" (underlining added),

which, in the past two fiscal years had read: "In addition, some of these proposed initiatives would be funded by eliminating existing programs."[15]

369. Upon information and belief, this year's Senate budget proposal, as likewise those of the two past fiscal years, repetitively violates not only Article VII, §4, but §§5, 6. These three constitutional provisions read, in full:

> §4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.
>
> Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added

[15] The Senate resolution for fiscal year 2015-2016 was #950, for fiscal year 2014-2015, it was #4036.

> to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.
>
> §5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill.
>
> §6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.
>
> No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation."

370. With respect to Legislative/Judiciary Budget Bill #S.6401, the Senate budget proposal makes no proposal concerning the legislative portion, addressing itself only to the judiciary portion, as follows:

> "JUDICIARY
> Legislature and Judiciary (S.6401)
> The Senate modifies the Office of Court Administration to fund necessary increases for judicial salaries." (Exhibit 31-b).

371. However, as Article VII, §4 gives the Legislature a free hand in amending the budgets for the Legislature and the Judiciary, there was no bar to the Senate Finance Committee or any other "appropriate" Senate committee, such as the Senate Judiciary Committee, amending #S.6401

372. Upon information and belief, the Assembly's current budget proposal, as likewise its proposals for the past two years, also repetitively violates Article VII, §§4, 5, 6.

373. With respect to Legislative/Judiciary Budget Bill #S.9001, the Assembly budget proposal also makes no proposal for the legislative portion, confining itself to the judiciary's portion, as follows:

"**Assembly Budget Proposal SFY 2016-17**
Judiciary

The Assembly provides an All FUNDS appropriation of $2.91 billion, an increase of $28.2 million.

State Operations

- In keeping with the findings of the New York State Commission on Legislative, Judicial, and Executive Compensation, the Assembly proposal includes $27.2 million to fully support the first phase of a multi-year adjustment in salary for members of the New York State Judiciary.

- The Assembly provides $1 million to establish a new court part at Rikers Island Correctional Facility.

Aid to Localities

- The Assembly accepts the Judiciary's proposal and recommends no changes.

Capital Projects

- The Assembly accepts the Judiciary's proposal and recommends no changes." (Exhibit 31-d).

374. Here, too, because Article VII, §4 gives the Legislature a free hand in amending the budgets for the Legislature and the Judiciary, there was no bar to the Assembly Ways and Means Committee – or such other "appropriate" Assembly committee as its Judiciary Committee – amending the unamended Legislative/Judiciary Budget Bill #A.9001 (Exhibit 30-a).

375. As for the Assembly's additional proposal under the heading "Article VII":

> "The Assembly proposes new legislation to extend for two years the ability of a referee and judicial hearing office (sic) to hear certain applications for Orders of Protection and Temporary Orders of Protection." (Exhibit 31-d),

it has no tie to any "particular appropriation" and, therefore, violates Article VII, §6.

376. Upon information and belief, defendants SENATE and ASSEMBLY have employed the "budget proposal" format as a vehicle for putting forward "new legislation", including on policy

and ethics issues, that they could not constitutionally include as budget legislation because it does not relate to any "particular appropriation" in appropriation bills or because it increases appropriations, in violation of Article VII, §§4-6.

377. To the extent defendants SENATE and ASSEMBLY viewed defendant CUOMO's appropriation-budget bills and his non-appropriation Article VII bills as containing appropriations and matter that the interpretations of "the New York Courts" constrained them from amending, they had a remedy in Article VII, §3, whose final third paragraph reads:

> '…The governor and the heads of departments shall have the right, and it shall be the duty of the heads of departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law."

378. The law relating to such "appearances and inquiries" is Legislative Law §31. Entitled "Appearances and inquiries in respect to the budget; procedure regulated", it states:

> "The governor and the heads of departments, divisions and offices each shall have the right to appear voluntarily and be heard in respect to the budget before the committees of the houses of the legislature to which such budget may be referred under the rules of such houses, as herein provided. Such voluntary appearance by the head of a department, division or office may be made either in person or by an accredited representative of the department, division or office. If the governor or the head of any department, division or office shall request a hearing before the committee, in respect to the budget, the committee shall notify him or them of the time or times when the committee is prepared to hear him or them on such voluntary appearance. <u>At any time before the bills accompanying the budget shall have been reported, the committee to which they were referred may request the head of any department, division or office, other than the governor, to appear before it, at a time stated or forthwith, and answer relevant inquiries in respect to the budget. If, pursuant to section three of article seven of the constitution, a house of the legislature directly requests the head of a department, division or office to appear before it or a committee thereof, to answer inquiries in respect to the budget, at a time stated or forthwith, the secretary or clerk of such house, as the case may be, shall notify him of such request and of the time when his appearance is desired, immediately upon the adoption of the resolution therefor. If the</u>

> head of a department, division or office whose appearance is requested by such house or committee be a board or commission, the request may be directed to one or more of its members, naming him or them." (underlining added).

379. Upon information and belief, neither defendants SENATE and ASSEMBLY nor any of their "appropriate committee[s]" requested defendant CUOMO or his "heads of departments" to appear before them to "answer inquires relevant" as to appropriations and legislation they were "constrained" from reducing or eliminating because of the interpretations of "The New York Courts" – and, if they did, it was not in conjunction with, or followed by, any request that defendant CUOMO "amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills", consistent with the constitutional scheme laid out in the first two paragraphs of Article VII, §3:

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

380. The statements made by members of the Joint Budget Conference Committee on March 15, 2016, at its first meeting, and by members of its subcommittees, including "public protection", the following day, at their first meeting (Exhibit 32)[16] pertaining to policy positions of their respective Senate and Assembly "one house" budget proposals, manifest a complete disregard of the limits of their powers under Article VII, §4 – identical to what they demonstrated in the past two years.

[16] The Assembly webpage posting the videos of these meetings is: http://assembly.state.ny.us/2016budget/?sec=jointvideo

381. Identically to the past two years, the Joint Budget Conference Committee and "public protections" subcommittee also demonstrated their violation of the requirement that their "deliberations…shall be open to the public in accord with the Open Meetings Law" (¶4 of the Joint Certificate). Their brief meetings were essentially announcements of their behind-closed-doors budget negotiations, conducted largely by staff, which last year and the year before produced no reports, in violation of Legislative Law §54-a and Permanent Joint Rules III, §1 and II, §1.

382. Identically to the past two years, the "real action" this year has been taking place out of public view, largely by the so-called professional staff, and will culminate in the behind-closed-doors, "three-men-in-a-room" budget deal-making by defendants CUOMO, FLANAGAN, and HEASTIE – expanded to a fourth man by inclusion of defendant KLEIN. Upon its conclusion, neither the public nor legislators will be informed of all changes made to the budget bills comprising the executive budget.

383. Based on past years, what will happen after the "three-men-in-a-room" huddle is predictable: Legislative/Judiciary Budget Bill #S.6401/A.9001 (Exhibit 27-b), as yet unamended, will, without discussion or vote by any committee or on the floor of the Senate and Assembly, turn into an amended bill, with significant alterations to legislative reappropriations, in particular. In violation of Legislative Law §54.2(b),[17] there will be NO report on it, and, in violation of Legislative Law §54.1,[18] there will be (i) NO "introductory memoranda or fiscal committee memoranda"

[17] Legislative Law §54.2(b) states: "Before voting upon AN appropriation bill submitted by the governor and related legislation, as amended, in accordance with article seven of the constitution, each house shall place on the desks of its members a report relating to EACH such bill" (underlining, capitalization, and italics added),

[18] Legislative Law §54.1 states: "Upon passage of appropriation bills by both the senate and the assembly, the senate and the assembly shall issue either jointly or separately a summary of changes to the budget submitted by the governor in accordance with article seven of the constitution. The summary shall be in such a form as to indicate whether the budget as amended provides that, for the general fund, any changes in anticipated disbursements are balanced by changes in anticipated receipts. The summary shall be

furnishing "summary of changes" or "description of changes" for it *prior* to its passage; (ii) NO "summary of changes" or "description of changes" to it "upon passage…by both the senate and assembly" – and, if there is (unlike the past two years when there was none), it will be insufficient and materially incomplete, in whatever form furnished, including as "part of the report required by section twenty-two-b of the state finance law". Further, in violation of State Finance Law §22-b, entitled "Report of the legislature on the enacted budget",[19] there will either be NO reports on the enacted budget pursuant to State Finance Law §22-b, as happened in each of the past two years (Exhibit 54-h), or, as in years before that, NO reports that, in fact, comply with State Finance Law §22-b with respect to the Legislative/Judiciary budget bill, *inter alia*, because they will lack any mention of the legislative reappropriations and of their alteration in the amended bill.

384. The net result of defendants SENATE and ASSEMBLY's multitudinous violations of essentially ALL constitutional, statutory, and rule provisions designed to ensure responsible governance and accountability is that – identically to the past two years – the 2016 annual reports of the Senate and Assembly Judiciary Committees, required by Senate VIII, §4(d) and Assembly Rule IV, §9, will be unable to meaningfully and accurately furnish information about the Judiciary

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accompanied by descriptions of changes to both receipts and disbursements in sufficient detail as is necessary to describe legislative action on the governor's budget submission. The summary shall be in such format as determined by the senate and the assembly, either jointly or separately, and may be issued separately, as part of the report required by section twenty-two-b of the state finance law or may be included within the introductory memoranda or fiscal committee memoranda relating to such legislation or in such other manner as may be determined by the senate and the assembly, either separately or jointly" (underlining added).

[19] State Finance Law §22-b states: "Within thirty days of passage of the budget the senate and the assembly shall issue, either jointly or separately, a legislative report on the budget. Such report shall contain a description of appropriation changes between the budget submitted by the governor and the enacted budget and the effect of such changes on employment levels. Commencing with fiscal year nineteen hundred ninety-four-nineteen hundred ninety-five, such report shall also summarize changes in appropriations by function in a form suitable for comparison with the schedule required to be submitted with the governor's proposed budget. Commencing with fiscal year two thousand seven-two thousand eight, such report shall also include an estimate of the impact of the enacted budget on local governments, the state workforce, and general fund projections for the ensuing fiscal year, consistent with the requirements of subdivision one-c of section

budget.[20] As for meaningful and accurate information about the Legislature's budget, the legislative committees whose charge that would be – the Senate Committee on Investigations and Government Operations; the Assembly Committee on Governmental Operations, and the Assembly Committee on Oversight, Analysis, and Investigation – will offer nothing on the subject.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

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

385. Plaintiffs repeat, reiterate, and reallege ¶¶1-384, with the same force and effect as if more fully set forth herein.

386. The budget bill statute establishing the Commission on Legislative, Judicial and Executive Compensation – Chapter 60, Part E, of the Laws of 2015 – is more egregiously unconstitutional than the materially identical statute it repealed and replaced: Chapter 567 of the Laws of 2010, which established the Commission on Judicial Compensation, as, unlike the predecessor statute, it is the product of behind-closed-doors, three-men-in-a-room budget deal-

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twenty-two of this article. The findings and descriptions contained in the report required by this section shall constitute the expression of legislative intent with respect to the budget to which such report relates."

[20] The Senate Judiciary Committee's 2015 Annual Report's section on the Judiciary budget for fiscal year 2015-2016 is two sentences: "The Legislature adopted a Unified Court System Budget increase to $1.85 billion. This reflects an increase of $36.3 million. The overall Judiciary budget increase was 2%." (Exhibit 33-a).

The Assembly Judiciary Committee 2015 Annual Report's section is a single sentence longer, but only the first sentence contains any numbers: "The 2015-2016 State budget adopted without change the Judiciary's budget request for appropriations in the amount of $2.8 billion." (Exhibit 33-b, underlining added).

Quite apart from the nearly 1 billion dollar difference between their figures as to the dollar cost of the Judiciary budget for fiscal year 2015-2016, the Assembly Judiciary Committee's assertion that the Judiciary's budget request was "adopted without change" is false. There were approximately $9 million dollars cut from the Judiciary's budget request, but in the complete absence of any formatting changes in the amended bill and the complete absence of amended introducer's memoranda, fiscal note, fiscal impact statement, or reports pursuant to Legislative Law §54 and State Finance Law §22-b, the only way to discern is a line-by-line comparison of the original and enacted bill. Apparently the Assembly Judiciary Committee was unwilling to do even that.

making by defendants CUOMO, HEASTIE, and then Temporary Senate President SKELOS, with a timetable reinforcing it as "a devious and underhanded means" for legislators" to obtain "a salary increase without accepting any responsibility therefor".[21]

387. The record of this citizen-taxpayer action already contains a full briefing as to the unconstitutionality of both statutes, *as written*.[22] Below is a synthesis of what is already briefed and before the Court, now exclusively addressed to the unconstitutionality of Chapter 60, Part E, of the Laws of 2015, *as written*:

A. **<u>Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission's Judicial Salary Recommendations "the Force of Law"</u>**

388. On June 3, 2015, five Assembly members, all in the minority, and including the ranking member of the Assembly Committee on Governmental Operations, introduced a bill to amend Chapter 60, Part E, of the Laws of 2015 to remove its provision giving the Commission's salary increase recommendations "the force of law" and making its report for legislative and executive officers due at the same time as for judicial officers. The bill was A.7997 and its accompanying introducers' memorandum, submitted "in accordance with Assembly Rule III, Sec 1(f)" (Exhibit 34), stated, in pertinent part:

> "On March 31, 2015, a 137 page budget bill (S4610-A/A6721-A) was introduced, and was adopted by the Senate late that evening. The Senate bill was adopted by the Assembly after 2:30am on April 1, 2015.
>
> This budget bill included, inter alia, legislation to establish a special commission on compensation (hereinafter 'Commission') consisting of seven members, with three appointed by the Governor, one appointed by the Temporary

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[21] Quote from introducers' memorandum to A.7997, *infra* at ¶388 (Exhibit 34).

[22] Plaintiffs' challenge to the constitutionality of Chapter 567 of the Laws of 2010, *as written*, is the second cause of action of their March 30, 2012 verified complaint in their declaratory judgment action, *CJA v. Cuomo, et al*. – a full copy of which plaintiff SASSOWER had handed up to defendants SENATE and ASEMBLY when she testified at their February 6, 2013 "public protection" hearing – and a duplicate of which she furnished the Court in support of plaintiffs' September 22, 2015 cross-motion in support of summary judgment and other relief. Plaintiffs' September 22, 2015 cross-motion and their November 5, 2015 reply papers expanded the challenge to encompass Chapter 60, Part E, of the Laws of 2015, *as written*.

President of the Senate, one appointed by the Speaker of the Assembly, and two appointed by the Chief Judge of the State of New York. There were no appointments from the Senate minority or the Assembly minority.

This budget bill required the Commission to make its recommendations for judicial compensation not later than December 31, 2015, and for legislative and executive compensation not later than November 15, 2016. The budget bill further stated that such determinations shall have 'the force of law' and shall 'supercede' inconsistent provisions of the Judiciary Law, Executive Law, and the Legislative Law, unless modified or abrogated by statute.

This budget bill would enable legislators to receive substantial salary increases after the next election without incurring any political backlash for voting for those increases.

The budget bill was clear that the salary recommendations for legislators would not be announced until after the next election, too late to encourage potential candidates to run in the election against the incumbents and too late to require incumbents to justify such a salary increase during the election.

By making the salary increases automatic, the legislators would not need to vote on such increases at all, thereby enabling the legislators to avoid the political liability that would result from voting for large and unpopular salary increases for themselves. Indeed, since the Legislature would normally not be in session immediately after an election, there would not even be an opportunity for individual legislators to vote on such salary increase unless both houses of the legislature were called back into special session for this specific purpose. This would enable all the legislators to speak out against the salary recommendations, while knowing that they would not actually need to vote against such increases."

389. The memorandum then specified six different respects in which the bill's provision giving the Commission's salary recommendations "the force of law" was unconstitutional:

"b. Article III, Section 1 of the New York State Constitution states that the legislative power 'shall be vested in the Senate and Assembly.' A non-elected commission cannot be delegated legislative power to enact recommendations 'with the force of law' that can 'supercede' inconsistent provisions of law.

…

d. Article III, Section 13 of the New York State Constitution states that 'no law shall be enacted except by a bill,' yet the salary commission was given the power to enact salary recommendations 'with the force of law' without any legislative bill approving of such salaries being considered by the legislature.

e. Article III, Section 14 of the New York State Constitution states that no bill shall be passed 'or become law' except by the vote of a majority of the members elected to each branch of the legislature. The budget bill, however, stated that the recommendations of the salary commission would 'have the force of law' without any vote whatsoever by the legislators. Such a provision deprives the members of

> the legislature of their Constitutional right to vote on every bill prior to its enactment into law.
>
> f. Article IV, Section 7 of the New York State Constitution gives the Governor the authority to veto any bill, but there is no corresponding ability of the Governor to veto any recommendations of the salary commission before such recommendations would become effective."

And, additionally:

> "a. Article III, Section 6 of the New York State Constitution states that each member of the legislature shall receive an annual salary 'to be fixed by law.' The Constitution does not state that members of the legislature shall receive a salary 'to be fixed by a commission.'
> …
> c. Article III, Section 6 of the New York State Constitution states that legislators shall continue to receive their current salary 'until changed by law.' A non-elected commission cannot 'change the law' since only the State Legislature has the power to change the law." (Exhibit 34).

390. In *St. Joseph Hospital, et al. v. Novello, et al.*, 43 A.D.3d 139 (2007), a case challenging a statute that gave "force of law" effect to a special commission's recommendations – Chapter 63, Part E, of the Laws of 2005 – then Appellate Division, Fourth Department Justice Eugene Fahey, writing in dissent, deemed the statute unconstitutional, violating the presentment clause and separation of powers:

> "It is apparent that the Legislation inverts the usual procedure utilized for the passage of a bill. According to the usual procedure, a bill is presented to the Governor for his or her signature or veto after passage by the Senate and the Assembly. Should the Governor sign the bill, it becomes law; should the bill be vetoed, the veto may be overridden by a two-thirds vote of the Legislature. Here, the Legislation creates a process that allows the recommendations of the Commission to become law without ever being presented to the Governor after the action of the Legislature." *Id*, 152.

391. Justice Fahey's dissent was cited by the New York City Bar Association's *amicus curiae* brief to the Court of Appeals in a different case challenging the same statute, *Mary McKinney, et al. v. Commissioner of the New York State Department of Health, et al*., 15 Misc.3d 743 (S.Ct. Bronx 2006), affm'd 41 A.D.3d 252 (1st Dept. 2007), appeal dismissed, 9 N.Y.3d 891 (2007),

appeal denied, 9 N.Y.3d 815; motion granted, 9 N.Y.3d 986. It characterized "the force of law" provision as:

> 'a process of lawmaking never before seen in the State of New York' (at p. 24);
>
> a 'novel form of legislation…in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)';
>
> a 'gross violation of the State Constitution's separation-of-powers and…the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State's laws' (at p. 25);
>
> 'most unusual [in its]…self-executing mechanism by which recommendations formulated by an unelected commission automatically become law…without any legislative action' (at p. 28);
>
> unlike 'any other known law' (at p. 29);
>
> 'a dangerous precedent' (at p. 11) that
>
> 'will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).[23]

392. This outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.

393. The unconstitutionality of "the force of law" provision of Chapter 60, Part E, of the Laws of 2015 – and of the timing for the Commission's recommendation for legislative and

[23] The City Bar's *amicus* brief is posted on the webpage of this verified second supplemental complaint, on the Center for Judicial Accountability's website, www.judgewatch.org, accessible from the sidebar panel "Judicial Compensation-NY".

executive branch officers – requires the striking of the statute, in its entirety – there being no severability provision in the statute. (*St. Joseph Hospital, et al. v. Novello, et al*., *id*.).

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

394. By contrast to *McKinney*, where the Supreme Court upheld the statute because of the safeguarding provisions it contained, such safeguards are here absent.

395. Unlike the statute in *McKinney*, Chapter 60, Part E, of the Laws of 2015 does not provide for a commission of sufficient size and diversity, nor furnish the commission with sufficient guidance as to standards and factors governing its determinations.

396. It establishes a seven-member commission – and of these, only two members are legislative appointees, designated by the majority leaders of each house. This is an insufficient number to reflect the diversity of either the Legislature or the State.

397. Nor does the statute specify neutrality as a criteria for appointment – and having two commissioners appointed by the chief judge assures that at least two of the seven commissioners will have been appointed to achieve the Judiciary's agenda of pay raises.

398. As the Judiciary would otherwise have no deliberative role in determining judicial pay raises legislatively and the Chief Judge is directly interested in the determination, the Chief Judge's participation as an appointing authority is, at very least, a constitutional infirmity.

399. Additionally, Chapter 60, Part E, of the Laws of 2015 furnishes insufficient guidance to the Commission as to the "appropriate factors" for it to consider. The statute requires the Commission to "take into account all appropriate factors, including but not limited to" six enumerated factors (§2, ¶3). These six enumerated factors are all economic and financial – and are completely untethered to any consideration as to whether the judges whose salaries are being evaluated are discharging their constitutional duty to render fair and impartial justice and afford the

People their due process and equal protection rights under Article I of the New York State Constitution.

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*.

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution

403. Article XIII, §7 of the New York State Constitution states:

> "Each of the state officers named in this constitution shall, during his continuance in office, receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed".

404. This express prohibition was highlighted by the then Governor and the Senate and Assembly in 2009 in defending against the judges' judicial pay raise lawsuits before the New York Court of Appeals. Their November 23, 2009 brief stated:

> "This Court has never decided whether the provision of Article XIII, §7, banning salary increases during a State officer's term of office, applies to judges…. it seems unlikely that this Court could uphold the order below, to the extent it was adverse to Defendants, or grant relief to Plaintiffs on their appeal, without addressing Article XIII, §7."

405. Yet, the Court of Appeals' February 23, 2010 decision in *Maron v. Silver*, 14 N.Y.3d 230, granting judgment in favor of the judges, neither addressed nor even mentioned Article XIII, §7.

406. Because Chapter 60, Part E, of the Laws of 2010, *as written*, allows the Commission to effectuate salary increases for judges during their terms, it violates Article XIII, §7 and is unconstitutional.

D. <u>Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #S.4610/A-6721 Violated Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3</u>

407. Beyond the six constitutional violations that the legislators' introducers' memorandum for A.7997 itemized concerning "the force of law" provision of Chapter 60, Part E, of the Laws of 2015 (Exhibit 34), their memorandum included a further constitutional violation as to the whole of Part E:

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

408. In fact, Part E, which was Part E of defendant CUOMO's Budget Bill #S.4610/A.6721 (Exhibit 35-a), violated not only Article VII, §6, but Article VII, §§2 and 3.

409. In pertinent part, Article VII, §§2 and 3 state:

> §2. …on or before the second Tuesday following the first day of the annual meeting of the legislature…, the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law.
>
> §3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein. The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills…"

410. Pursuant to Article VII, §2, defendant CUOMO submitted his executive budget for fiscal year 2015-2016 on January 21, 2015. No Budget Bill #S.4610/A.6721 was part of his submission – nor any legislation proposing a Commission on Legislative, Judicial and Executive Compensation.

411. On March 31, 2015, following behind-closed-doors, three-men-in-a-room budget deal-making, Budget Bill #S.4610/A.6721, bearing the date March 31, 2015, was introduced (Exhibit 35-a) – containing a Part E (pp. 93-95), summarized at the outset of the bill as:

> "establishing a commission on legislative, judicial and executive compensation, and providing for the powers and duties of the commission and for the dissolution of the commission and repealing chapter 567 of the laws of 2010 relating to establishing a special commission on compensation, and providing for their powers and duties; and to provide periodic salary increases to state officers".

412. Such Budget Bill #S.4610/A.6721 was unconstitutional, *on its face*:

(a) <u>it was untimely</u> – Article VII, §3 required defendant CUOMO to submit his "bills containing all the proposed appropriations and reappropriations" when he submitted

his executive budget, on January 21, 2015. Likewise his proposed legislation relating thereto. No new budget bill, embracing never-proposed legislation, could be constitutionally submitted by him on March 31, 2015 (*Winner v. Cuomo*, 176 A.D.2d 60, 63 (3rd Dept. 1992));[24]

(b) its content was improper – Part E was not legislation capable of providing "monies and revenues" for expenditures of the budget, as Article VII, §2 specifies and, compared to other Parts of the bill, it had the most tenuous connection to the budget, having no relation at all. (*Pataki v. Assembly*, 4 NY3d 75 (2004)).[25]

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[24] *Winner v. Cuomo*, at p. 63: "As Members of the State Assembly, plaintiffs are charged with acting on the Executive Budget (NY Const, art VII, § 4). Defendant, in turn, has a constitutional and statutory obligation to timely submit his budget bills to the Legislature (NY Const, art VII, §3; State Finance Law §24). By reducing the time available to review the budget bills, defendant impinges upon the Legislature's opportunity to timely review his proposals and hampers the ability to question Executive Department heads regarding the budget (Legislative Law § 31)."

State Finance Law §24, "Budget bills": "1. The budget submitted annually by the governor shall be simultaneously accompanied by a bill or bills for all proposed appropriations and reappropriations and for the proposed measures of taxation or other legislation, if any, recommended therein. Such bills shall be submitted by the governor and shall be known as budget bills."

[25] While the three-judge plurality opinion in *Pataki v. Assembly*, 4 NY 3d. at 99, "le[ft] for another day the question of what judicially enforceable limits, if any, beyond the anti-rider clause of article VII, §6, the Constitution imposes on the content of appropriation bill", the concurrence of Judge Rosenblatt, which had made the plurality a majority, took issue with their approach stating (at 101-102):

> "A proper resolution of these lawsuits requires a test, consisting of a number of factors, no single one of which is conclusive, to determine when an appropriation becomes unconstitutionally legislative. To begin with, anything that is more than incidentally legislative should not appear in an appropriation bill, as it impermissibly trenches on the Legislature's role. The factors we consider in deciding whether an appropriation is impermissibly legislative include the effect on substantive law, the durational impact of the provision, and the history and custom of the budgetary process.
>
> In determining whether a budget item is or is not essentially an appropriation, one must look first to its effects on substantive law. The more an appropriation actively alters or impairs the State's statutes and decisional law, the more it is outside the Governor's budgetary domain. A particular 'red flag' would be non-pecuniary conditions attached to appropriations.
>
> History and custom also count in evaluating whether a Governor's budget bill exceeds the scope of executive budgeting. The farther a Governor departs from the pattern set by prior executives, the resulting budget actions become increasingly suspect. I agree that customary usage does not establish an immutable model of appropriation (*see* plurality op at 98). At the same time, it would be wrong to ignore more than 70 years of executive budgets that basically consist of line items.
>
> The more an executive budget strays from the familiar line-item format, the more likely it is to be unauthorized, nonbudgetary legislation. As an item exceeds a simple identification of a sum of money along with a brief statement of purpose and a recipient, it takes on a more legislative character. Although the degree of specificity the Governor uses in describing an appropriation is within executive discretion (*see People v Tremaine*, 281 N.Y. 1, 21 N.E.2d 891 [1939]), when the specifics transform an appropriation into proposals for programs, they poach on powers reserved for the Legislature.

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #S.4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process

413. Budget Bill #S.4610/A.6721, both introduced and amended on March 31, 2015 (Exhibits 35-a, 35-b), stated in its first section:

> "This act enacts into law major components of legislation which are necessary to implement the state fiscal plan for the 2015-2016 state fiscal year. Each component is wholly contained within a Part identified as Parts A through J."

414. This was false and fraudulent with respect to Part E. Part E was in no way a "component[] of legislation necessary to implement the state fiscal plan for the 2015-2016 state fiscal year", let alone a "major" one.

415. Also materially false and fraudulent was the prefatory paragraphs to the amended Budget Bill #S.4610-A/A.6721-A (Exhibit 35-b), insofar as they connote legitimate legislative process:

> "IN SENATE – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read twice and ordered printed, and when printed to be committed to the Committee on Finance – committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee
>
> IN ASSEMBLY – A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution – read once and referred to the Committee on Ways and Means – again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee".

In addition, the more a provision affects the structure or organization of government, the more it intrudes on the Legislature's realm. The executive budget amendment contemplates funding – but not organizing or reorganizing – state programs, agencies and departments through the Governor's appropriation bills.

The durational consequences of a provision should also be taken into account. As budget provisions begin to cast shadows beyond the two-year budget cycle, they look more like nonbudget legislation. The longer a budget item's potential lifespan, the more legislative is its nature. Similarly, the more a provision's effects tend to survive the budget cycle, the more it usurps the legislative function."

416. The amending of Budget Bill #S.4610/A.6721 was completely opaque, both in the Senate and Assembly. Upon information and belief, the amendments were not voted on in any committee or on the Senate and Assembly floor and no amended introducers' memorandum revealed the changes to the bill. Reflecting this – as relates to the Senate Finance Committee – is the video of its two-minute March 31, 2015 meeting,[26] whose sole agenda item was #S.4610-A/A.6721-A. Notwithstanding audio unintelligibility in parts, the following can be discerned:

Chair DeFrancisco: Senate Finance Committee meeting for this budget cycle and would you please read.

Clerk: Senate Bill 4610-A, a budget bill, enacts various provisions of law necessary to implement the state fiscal plan for the 2015-2016 state fiscal year.

Chair DeFrancisco: Is there a motion?

Unidentified woman: Yes.

Chair DeFrancisco: Senator Squadron. Yes, Senator Squadron.

Senator Squadron: I note this is an A. When did the original..?

Chair DeFrancisco: Sometime before the A, I don't know.

Laughter

Chair DeFrancisco: I simply don't, I simply don't. And is there some relevance to when it was actually?

Senator Squadron: I was just curious as to highlight, when this bill came out.

Chair DeFrancisco: It was before the Governor's original submission was the bill number 4610. This is an A because it made changes

Senator Squadron: They were both submitted then?

Chair DeFrancisco: They were what?

[26] http://www.nysenate.gov/calendar/meetings/finance/march-31-2015/finance-meeting-1. The Senate webpage shows the vote as having been 29 ayes, 2 nays, with 6 ayes without rec.

Senator Squadron: They were both submitted then?

Chair DeFrancisco: The Governor's bill was submitted a long time ago.

Senator Squadron: The original 4610 wasn't [unintelligible].

Chair DeFrancisco: Clarification.

Ranking Member Krueger: The section C in this bill between the, sorry, Senator Squadron? In the amended version, section C is different than in the previous version. And, also, the fact sheet has not been updated, so that it's actually not correct, so you might just want to double check section C.

Senator Squadron: Thank you very much.

Chair DeFrancisco: The bill has been moved. The bill has been moved and seconded. All in favor.

Voices: Aye.

Chair DeFrancisco: Opposed.

Silence.

Senator Squadron: Without rec.

Chair DeFrancisco: Without rec, Senator Squadron, Rivera, Dilan. Perkins?

Chair DeFrancisco: No, for Senator Perkins. The bill is reported direct to the third reading. (gavel) We are adjourned.

417. Such video additionally establishes that the vote by the Senate Finance Committee – without which Budget Bill #S.4610-A/A.6721-A could not have proceeded to the Senate floor – was fraudulently procured by then Senate Judiciary Committee Chair DeFrancisco and Ranking Member Krueger, both of whom knew – including from the very face of the bill which identified that day's date – that it was not introduced "a long time ago".

418. Part E, which was not amended when Budget Bill #S.4610/A.6721 was amended, was entirely new legislation. However, notwithstanding the bill's "EXPLANATION – Matter in <u>italics</u>

(underscored) is new; matter in brackets [ ] is old law to be omitted", nothing in either the unamended bill nor the amended bill revealed that Part E was new (Exhibits 35-a, 35-b).

419. In fact, Part E did not belong in Budget Bill #S.4610/A.6721. If it belonged in any budget bill, it would have been defendant CUOMO's Budget Bill #S.2005/A.3005, introduced on January 21, 2015 as his "Public Protection and General Government Article VII Legislation" (Exhibit 36-a) – and containing a Part I (eye) establishing a Commission on Executive and Legislative Compensation, structured differently from Chapter 567 of the Laws of 2010, which it did not repeal. Most significantly, the salary recommendations of the Commission on Executive and Legislative Compensation would not have "the force of law" (Exhibits 36-a, 36-b, 36-c).

420. On March 27, 2015, by an opaque amendment process, this Protection/General Government Budget Bill #S.2005/A.3005 was amended twice – the first time, retaining Part I (eye) (pp. 42-44), and second time, dropping it as "Intentionally Omitted" (p. 21). The Assembly memorandum for this second amendment, A.3005-B, (Exhibit 36-d) gave no explanation for why Part I (eye) was dropped – or, for that matter, what the now omitted Part I (eye) had consisted of.

421. Four days later, on March 31, 2015, and without any accompanying introducer's memorandum, in violation of Senate Rule VII, §1 and Assembly Rule III, §§1f, 2(a), defendant CUOMO's Budget Bill #S.4610/A.6721 (Exhibits 35-a, 35-b) was untimely introduced in violation of Article VII, §§2, 3 of the New York State Constitution and State Finance Law §24 based thereon, and then, in violation of Senate Rule VII, §4b and Assembly Rule III, §§1f, 6, amended in an even more opaque fashion (Exhibits 35-a, 35-c) and without any amended introducer's memorandum (Exhibit 35-d). Its Part E repealed Chapter 567 of the Laws of 2010, thereupon modeling the Commission on Legislative, Judicial and Executive Compensation on the repealed statute – including its provision for giving the Commission's salary recommendations "the force of law".

422. The fact that this just-introduced/just-amended S.4610-A/A.6721-A, with its Part E, was then sped through to the Senate and Assembly floor, on a "message of necessity", to meet an April 1 fiscal year deadline, which had no relevance to it, only exacerbates the injury to the public which, pursuant to Legislative Law §32-a, had a right to be heard at a legislative hearing on the budget about a budget bill containing Part E (*Winner v. Cuomo*, *supra*, at p. 62, fn. 24.)

423. At bar, defendants' violations of multitudinous constitutional, legislative, and mandatory Senate and Assembly rule provisions, denying the People legislative due process and perpetrating fraud, render Chapter 60, Part E, of the Laws of 2015 unconstitutional. "*Albany's Dysfunction Denies Due Process*", 30 Pace L. Rev. 965, 982-983 (2010) Eric Lane, Laura Seago.

AS AND FOR A FOURTEENTH CAUSE OF ACTION

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

424. Plaintiffs repeat, reiterate, and reallege ¶¶1-423, with the same force and effect as if more fully set forth herein.

425. Defendants' refusal to discharge ANY oversight duties with respect to the constitutionality and operations of a statute they enacted without legislative due process renders the statute unconstitutional, *as applied*. Especially is this so, where their refusal to discharge oversight is in face of DISPOSITIVE evidentiary proof of the statute's unconstitutionality, *as written and as applied* – such as plaintiffs furnished them (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48).

426. The Commission on Legislative, Judicial and Executive Compensation operated unconstitutionally in at least four specific respects – and plaintiffs presented these to the Commission as threshold issues for its determination.

427. The Commissioners' willful disregard of these four threshold issues suffice to render the judicial salary increase recommendations of their December 24, 2015 Report void *ab initio* – and Chapter 60, Part E, of the Law of 2015 unconstitutional, *as applied*.

A. ***As Applied*, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional**

428. Plaintiff SASSOWER raised the threshold issue of the disqualification of three of the Commission's seven members – Barry Cozier, Esq., James J. Lack, Esq., and Chair Sheila Birnbaum, Esq. – directly to them at the conclusion of the Commission's first organizational meeting on November 3, 2015. The context was her furnishing to each Commissioner a copy of plaintiffs' October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report, pivotally demonstrating that systemic judicial corruption, involving supervisory and appellate levels and embracing the Commission on Judicial Conduct is a constitutional bar to raising judicial salaries.

429. Later that day, plaintiff SASSOWER reiterated the disqualification issue by a November 3, 2015 e-mail,[27] stating:

> "…should any of the Commissioners feel themselves unable to discharge their duties with respect to the systemic, three-branch corruption issues presented by CJA's citizen opposition – and that other citizens will be presenting, as well – they should step down from the Commission forthwith. Two Commissioners, Cozier and Lack, are absolutely disqualified by reason of their active role in that corruption – and Chairwoman Birnbaum perhaps as well. I so-stated this to them, this morning – and will particularize the details, with substantiating evidence, in advance of the November 30, 2015 public hearing, should they fail to step down from the Commission – or publicly disclose and address their conflicts of interest."

[27] Exhibit 6 to plaintiffs' November 30, 2015 written testimony, contained in accompanying free-standing folder, at pp. 3-4.

430. In testifying at the Commission's November 30, 2015 hearing, plaintiff SASSOWER repeated that:

> "This Commission's threshold duty is, of course, to address issues of the disqualification of its members for actual bias and interest" (testimony, p. 4)

and that, with respect to Commissioners Cozier and Lack and Chair Birnbaum,

> "all three [had] demonstrated their utter disregard for casefile evidence of judicial corruption, particularly as relates to the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, whose corruption they have perpetuated." (testimony, p. 4).

431. Plaintiff SASSOWER's December 2, 2012 supplemental submission furnished the particulars as to why these three Commissioners could not examine the evidence of systemic judicial corruption, raised by plaintiffs and other citizens in opposition to judicial salary increases, without exposing their pivotal roles in covering up that evidence and perpetuating the corruption (free-standing folder).

432. The failure and refusal of Commissioners Cozier, Lack, and Chair Birnbaum to rule upon the disqualification issue raised, the failure and refusal of their fellow Commissioners to rule upon it, and the concealment of the disqualification issue from the Commission's December 24, 2015 Report – simultaneously with concealing that systemic judicial corruption was ever raised in opposition to the judicial salary increases and that it is an "appropriate factor" – concede the disqualifications, *as a matter of law* – and renders the Report a nullity.

B. ***As Applied*, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an "Appropriate Factor" Barring Judicial Salary Increases is Unconstitutional**

433. In testifying before the Commission on November 30, 2015 at its one and only hearing on judicial compensation, plaintiff SASSOWER identified, both by her oral and written presentation, that:

> "The appellate, administrative, disciplinary, and removal provisions of Article VI [of the New York State Constitution] are safeguards whose integrity – or lack thereof – are not just 'appropriate factors' [for the Commission's consideration], but constitutional ones. Absent findings that these integrity safeguards are functioning and not corrupted, the Commission cannot constitutionally recommend raising judicial pay."

434. In so-stating, she was quoting from plaintiffs' October 27, 2011 Opposition Report which presented a constitutional analysis of the Court of Appeals February 23, 2010 decision in *Maron v. Silver*, 14 N.Y.3d 230, and Article VI of the New York State Constitution – and her written testimony appended the analysis, in full (Exhibit 3 thereto).

435. The Commissioners' failure to deny or dispute the accuracy of that analysis in any respect – and their concealment, by their December 24, 2015 Report, of the very issue that systemic judicial corruption, involving supervisory and appellate levels and the Commission on Judicial Conduct is an "appropriate factor" of constitutional magnitude – concedes it, *as a matter of law*.

C. ***As Applied*, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional**

436. From the very first of plaintiff SASSOWER's e-mails to the Commission – on November 2, 201528 – she advised that the Commission on Judicial Compensation's August 29, 2011 Report was the product of fraud "covered up by all the executive and legislative public officers who believe themselves entitled to pay raises". Her e-mail stated that this was:

> "chronicled in CJA's October 27, 2011 Opposition Report, in a mountain of correspondence, criminal and ethics complaints relating thereto, and by the public interest litigations we have undertaken over the past four years, all accessible from the prominent links on CJA's homepage, www.judgewatch.org. …
>
> Please forward this e-mail to all seven members of the Commission on Legislative, Judicial and Executive Compensation so that they can be

[28] Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at pp. 5-6.

apprised of the systemic fraud, corruption, and dysfunction that is before them, threshold, not only with respect to judicial compensation, but with respect to legislative and executive compensation." (underlining in the original).

437. The following morning, November 3, 2015, before the Commission's first organizational meeting, plaintiff SASSOWER sent a second e-mail stating:

> "…inasmuch as CJA's October 27, 2011 Opposition Report to the Commission on Judicial Compensation's August 29, 2011 Report is the STARTING POINT for your determination of the compensation issues as relate to ALL THREE BRANCHES, I take this opportunity to furnish you that link, directly. Here it is: http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm. The four-page executive summary is attached.
>
> I am available to answer questions, including publicly and under oath." (red and capitalization in the original).

438. Following the November 3, 2015 first organizational meeting, plaintiff SASSOWER sent a second November 3, 2015 e-mail,[29] stating:

> "I hereby request to testify at the Commission's November 30, 2015 public hearing in New York City.
>
> Such hearing date, nearly 4 full weeks from now, gives each Commissioner ample time to individually determine whether, as particularized by CJA's October 27, 2011 Opposition Report, the 3-phase judicial pay raises recommended by the August 29, 2011 Report of the Commission on Judicial Compensation and received by this state's judges beginning April 1, 2012, are statutory-violative, fraudulent, and unconstitutional – thereby requiring that this Commission's recommendations – having 'the force of law' – be for the nullification/voiding of the August 29, 2011 Report AND a 'claw-back' of the $150-million-plus dollars that the judges unlawfully received pursuant thereto.
>
> Because of the importance of CJA's October 27, 2011 Opposition Report, not only to your statutorily-required December 31, 2015 report of 'adequate levels of compensation and non-salary benefits' for this state's judges, but to your statutorily-required November 15, 2016 report of 'adequate levels of compensation and non-salary benefits' for our legislative and executive constitutional officers, I furnished a hard copy of the full October 27, 2011 Opposition Report to Chairwoman Birnbaum at the conclusion of this morning's organizational meeting. It consisted of: (1)

[29] Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at pp. 3-4.

> CJA's 38-page Opposition Report; (2) CJA's substantiating two-volume Compendium of Exhibits; and (3) the final two motions in CJA's lawsuit against the Commission on Judicial Conduct that went up to the Court of Appeals in 2002 – identified by the Opposition Report as having been handed up by me to the Commission on Judicial Compensation at its one and only July 20, 2011 public hearing, in support of my testimony.
>
> To the other three Commissioners physically present at this morning's meeting – Commissioners Johnson, Cozier, and Lack – I furnished to each, *in hand*, a copy of the 38-page Opposition Report and its 4-page Executive Summary.
>
> As for the three Commissioners not physically present – Commissioners Hedges, Reiter, and Hormozi – I had brought to the meeting copies of the 38-page Opposition Report and 4-page Executive Summary for them, as well. Unless they request same, I will assume they will be reading and/or downloading the Opposition Report from CJA's webpage: http://www.judgewatch.org/web-pages/judicial-compensation/opposition-report.htm. The Executive Summary is attached. …" (underlining, capitalization, and italics in the original).

439. Two weeks later, by a November 18, 2015 e-mail,[30] plaintiff SASSOWER stated that by now the Commissioners

> "should have each read and considered [the October 27, 2011 Opposition Report] so dispositive as to mandate a Commission request, if not demand, to the Judiciary and other judicial pay raise advocates for their comment, including their findings of fact and conclusions of law with respect thereto." (underlining in the original).

Based thereon, she stated:

> "please deem this e-mail as CJA's request that the Commission…give notice to the Judiciary and judicial pay raise advocates for their findings of fact and conclusions of law with respect to CJA's October 27, 2011 Opposition Report. As seen from the annexed October 28, 2011 e-mail from CJA to the Judiciary and judicial pay raise advocates, they have had a FULL FOUR YEARS to have made findings of fact and conclusions of law.
>
> Needless to say, the Commission's notice to the Judiciary and judicial pay raise advocates – particularly those who have already contacted the Commission about testifying at the November 30th Manhattan hearing – should request their response to CJA's assertion that the October 27, 2011 Opposition Report requires "that this Commission's recommendations – having 'the force of law' – be for the nullification/voiding of the August 29, 2011 Report AND a 'claw-back' of the $150 million-plus dollars that the

[30] Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at pp. 2-3.

judges unlawfully received pursuant thereto." (underlining added, capitalization in the original).

440. Yet, eleven days later, at the Commission's November 30, 2015 public hearing, the Commissioners allowed the Judiciary and judicial pay raise advocates to urge them to rely on the Commission on Judicial Compensation's August 29, 2011 Report – without the slightest inquiry as to their findings of fact and conclusions of law with respect to plaintiffs' October 27, 2011 Opposition Report.

441. Plaintiff SASSOWER's own testimony at the hearing reiterated that plaintiffs' October 27, 2011 Opposition Report "proved" the "fraudulence, statutory violations, and unconstitutionality of the Commission on Judicial Compensation's August 29, 2011 Report and its recommended judicial salary increases – and that the record of plaintiffs' three litigations based thereon established that:

> "But for the evisceration of any cognizable judicial process in ALL three of these litigations…current judicial salaries would rightfully be what they were in 2011 and the 2010 statute that created the Commission on Judicial Compensation which, in 2015, became the template for the statute creating this Commission, would have been declared unconstitutional, long, long ago." (testimony, p. 2).

She stated:

> "The Judiciary and judicial pay raise advocates testifying here today, and by their written submissions, tout the excellence and high-quality of the Judiciary – implicitly recognizing that judicial salary increases are predicated on judges fulfilling their constitutional function of rendering justice. Plainly, they need a reality check if they are actually unaware of the lawlessness and non-accountability that reigns in New York's judicial branch, notwithstanding our notice to them, again, and again, and again. Let them confront, with findings of fact and conclusions of law, our October 27, 2011 Opposition Report and our three litigations arising therefrom. This includes our constitutional analysis, drawn from the Court of Appeals' February 23, 2010 decision in the judges' judicial compensation lawsuits and from Article VI of the New York State Constitution…" (testimony, p. 2, underlining added).

She further stated that each of the Commissioners, by then, had had ample time to verify the accuracy of the October 27, 2011 Opposition Report and that "current judicial salary levels are…'ill-gotten gains', stolen from the taxpayers" (at p. 4).

442. On December 2, 2015, plaintiffs furnished the Commission with a supplemental submission stating:

> "The Commission's charge is to 'examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits' (§2.1) and 'the prevailing adequacy of pay levels and other non-salary benefits' (§2.2a(2)). None of the judges and other pay raise advocates testifying before you identified this. Instead, they misled you with rhetoric that the levels you should be setting are the ones they view as 'fair', 'equitable', and commensurate with their self-serving notions of the dignity and respect to be accorded the judiciary, furnishing NO EVIDENCE as to the inadequacy of current judicial salary levels – bumped up $40,000 by the Commission on Judicial Compensation's August 29, 2011 Report. They did not even assert that current salary levels are inadequate, let alone after the addition of non-salary benefits. In fact, and repeating their fraud at the Commission on Judicial Compensation's July 20, 2011 hearing, they made no mention of non-salary benefits – or their monetary value – a concealment also characterized by their written submissions before you.
>
> …CJA's October 27, 2011 Opposition Report…highlighted (at pp. 1, 17-18, 22, 31) that among the key respects in which the Commission on Judicial Compensation's August 29, 2011 Report was statutorily-violative and fraudulent is that its salary increase recommendations were 'unsupported by any finding that current 'pay levels and non-salary benefits' [were] inadequate' – reflective of the fact that the judges and judicial pay raise advocates had not furnished probative evidence from which such finding could be made. Such finding, moreover, would require an articulated standard for determining adequacy…" (pp. 1-2, capitalization in the original).

The December 2, 2015 supplemental submission then went on to show (pp. 2-3) that the ONLY evidence that the Commission had before it was as to the adequacy of existing salary and non-compensation benefits.

443. On December 21, 2015, plaintiff SASSOWER furnished the Commission with a further submission. Entitled "Assisting the Commission in discharging its statutory duty of 'tak[ing]

into account all appropriate factors' as to 'adequate levels of compensation and non-salary benefits", it presented:

> "further evidence of 'the lawlessness and non-accountability that reigns in New York's judicial branch, to which [she] testified at the November 30, 2015 hearing as not only an 'appropriate factor' for the Commission's consideration, disentitling the judiciary to any salary increases, but a 'factor' of constitutional magnitude." (underlining in the original).

The letter reiterated that the judges and judicial pay raise advocates could easily corroborate this – prefatory to furnishing the Commission "with findings of fact and conclusions of law with respect to…CJA's October 27, 2011 Opposition Report and the record of the three litigations based thereon.

444. The Commission's December 24, 2015 Report ignored ALL the foregoing. It made no mention of any opposition to the judicial salary increases, made no mention of plaintiffs' October 27, 2011 Opposition Report, made no findings of fact and conclusions of law with respect to it – or with respect to the record of the three lawsuits based thereon – or as to the adequacy of existing levels of judicial compensation and non-salary benefits. Its judicial salary increase recommendations rested on the Commission on Judicial Compensation's August 29, 2011 Report – and on no finding that existing levels of judicial compensation and non-salary benefits were inadequate. In other words, the December 24, 2015 Report is based on the very fraud and absence of evidence that plaintiffs had presented in opposition.

D. ***As Applied*, a Commission that Suppresses and Disregards the Input of Taxpaying Citizens, Particularly in Opposition to Salary Increases, is Unconstitutional**

445. By an November 18, 2015 e-mail,[31] plaintiff SASSOWER objected to the Commission's decision, at its November 3, 2015 first organizational meeting, to hold only a single hearing on judicial compensation, in Manhattan – "without the slightest discussion of whether that

[31] Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at p. 2.

would be fair to New Yorkers in the state's vast western, northern, and central regions, where, additionally, salaries and costs of living are so markedly lower." She requested that the Commission "schedule at least one upstate public hearing on judicial compensation".

446. Later that day, plaintiff SASSOWER sent another e-mail,[32] this one entitled: "Informing the Public about the Commission's Nov. 30 Public Hearing on Judicial Compensation & its Opportunity to be Heard". Noting that in the two weeks since the Commission had scheduled its November 30, 2015 public hearing in Manhattan, it had "yet to send out a press release about it and the opportunity the public has to testify and/or make written submissions about salaries and benefits for judges, whose costs it pays for", she requested that the Commission immediately put out a press release about the November 30th hearing – "and the opportunity the public has to testify and/or to furnish written comment". She further stated:

> "the only reason for the Commission's proceeding 'quietly' – as it has – is its knowledge that the taxpaying public would never tolerate pay raises for corrupt and incompetent judges – such as we have and cannot rid ourselves of. Likewise pay raises for our collusive and corrupt Legislators and Governor, Attorney General, and Comptroller…"

447. Plaintiff SASSOWER received no response to either of these two requests because the Commissioners did not send her any response.

448. At the November 30, 2015 public hearing, plaintiff SASSOWER preceded her testimony by the observation that:

> "There was no press announcement from this Committee, press release sent out notifying the public of this hearing today and, consequently, there are not many people present, nor who requested to testify because they didn't know about this hearing. Nor did they ever know or do they know that they have an opportunity to make written submissions." [transcript, p. 70].

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[32] Exhibit 6 to plaintiff SASSOWER's November 30, 2015 testimony, at p. 1.

449. None of the Commissioners disputed that there had been no press announcement or release sent out to inform the public. Nevertheless, a week later, Chair Birnbaum opened the Commission's December 7, 2015 meeting – its first after the hearing – by stating:

> "there was a statement made about that we did not get notice of the hearings out to the public. I just would like to tell you that there was an in-media advisory that is on our website and that was sent out to over 100 media outlets throughout the state and that was also distributed to wire services who have nationwide distribution. So we feel strongly that there was more than sufficient publicity about the hearings. And the hearings were very well attended…" [transcript, p. 2].

450. Upon information and belief, Chair Birnbaum's assertion that a media advisory posted on the Commission's website had been sent out to over 100 media outlets throughout the state and …distributed to wire services who have nationwide distribution" is false.[33] No substantiation was furnished in response to plaintiff SASSOWER's FOIL request.[34]

451. The Commission's December 24, 2015 Report concealed the paucity of its outreach. Stating that it had "invited written commentary and established post office and e-mail addresses" (at p. 4), the Report did not reveal how this had been publicized or the opportunity to testify at the hearing, which, in three separate places (Chair Birnbaum's coverltr, pp. 1, 4), it misrepresented as being "day-long", when, in fact, it was only 2-1/2 hours. It concealed entirely that there was any opposition to judicial salary increases, whether from "interested individuals" or "organizations", let alone its basis, and made no finding as to its legitimacy or sufficiency in rebutting support for the judicial salary increases.

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[33] The Commission made no claim to having sent out any press release for its March 10, 2016 hearing on legislative and executive compensation, held in the same location as its November 30, 2015 hearing. The result was that it had only two witnesses testifying – the executive directors of Common Cause-NY and Citizens Union.

[34] Plaintiffs' FOIL requests to the Commission are in the accompanying free-standing folder containing their submissions to the Commission.

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

AS AND FOR A FIFTEENTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

> (i) in violation of §2, ¶1, the Commission was not "established" "commencing June 1, 2015". Instead, the Commission's four appointing authorities delayed their appointments, with defendant Cuomo's appointments not until almost four months later, October 30, 2015. The result was that the Commission did not have the statutorily-contemplated six months to discharge its duties with respect to "judges and justices of the state-paid courts of the unified court system". Instead, it had but two months, further reduced by the holiday season;
>
> (ii) in violation of §3, ¶2 , requiring that the Commission be "governed by articles 6, 6-A and 7 of the public officers law", it failed to furnish records it was duty-bound to disclose under Public Officers Law, Article VI [Freedom of Information Law [FOIL] (see accompanying folder);
>
> (iii) in violation of §3, ¶¶2, 5, and 6, the Commission did not utilize the significant investigative powers and resources available to it to discharge its statutory-mandate.

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

AS AND FOR A SIXTEENTH CAUSE OF ACTION

Three-Men-in-a-Room, Budget Dealing-Making is Unconstitutional, *As Unwritten* and *As Applied*

458. Plaintiffs repeat, reiterate, and reallege ¶¶1-457, with the same force and effect as if more fully set forth herein.

A. Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, *As Unwritten*

459. The procedure governing the submission and enactment of the state budget is laid out in Article VII, §§1-7 of the New York State Constitution. Upon the Governor's submission of the budget to the Legislature pursuant to §2, the procedure, is spelled out in §§3, 4.[36]

460. Pursuant thereto, once the Governor submits the budget, it is within the legislative branch. He has thirty days, as of right, within which to submit any amendments or supplements to his bills, following which it is by "consent of the legislature". He also has the right "to appear and be heard during the consideration thereof, and to answer inquiries relevant thereto." Further, the Legislature may request the Governor to appear before it – and may command the appearance of his department heads to "answer inquiries" with regard to the executive budget. Based thereon, and in such public fashion, it may "consent" to the Governor's further amending and supplementing his budget.

461. Neither the Constitution, nor statute, nor Senate and Assembly rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it is an flagrant violation of Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so.

[36] Article VII, §3 is quoted at ¶¶377, 379, *supra*. Article VII, §4 is quoted at ¶369.

462. Consistent with the Court of Appeals decision in *King v. Cuomo*, 81 N.Y.2d 247 (1993) – and for the multitude of reasons that decision gives with respect to the bicameral recall practice – such three-men-in-a-room, budget deal-making must be declared unconstitutional.

463. The parallels between the bicameral recall practice declared unconstitutional in *King v. Cuomo* and the challenge, at bar, to three-men-in-a-room budget deal-making are obvious. Only minor alterations in the text of the decision in *King v. Cuomo* are needed to support the declaration here sought, as by the below bold-faced & bracketed insertions to pp. 251-255:

> "The challenged [] practice significantly unbalances the law-making options of the Legislature and the Executive beyond those set forth in the Constitution. By modifying the nondelegable obligations and options reposed in the Executive **[and Legislature]**, the practice compromises the central law-making rubrics by adding an expedient and uncharted bypass. The Legislature **[and Executive]** must be guided and governed in this particular function by the Constitution, not by a self-generated additive (see, *People ex rel. Bolton v Albertson*, 55 NY 50, 55).
>
> Article IV, §7 and **[Article VII, §§1-4]** of the State Constitution prescribes how a **[budget]** bill becomes a law and explicitly allocates the distribution of authority and powers between the Executive and Legislative Branches…
>
> The description of the process is a model of civic simplicity…
>
> The putative authority **[for behind-closed-doors, three-men-in-a-room budget deal-making]** 'is not found in the constitution' (*People v Devlin*, 33 NY 269, 277). We conclude, therefore, that the practice is not allowed under the Constitution….
>
> When 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 (*Settle v Van Evrea*, 49 NY 280, 281 [1872]; *see also, People v Rathbone*, 145 NY 434, 438). In a related governance contest, this Court found 'no justification ... for departing from the literal language of the constitutional provision' (*Anderson v Regan*, 53 NY2d 356, 362 [emphasis added]). As we stated in *Settle v Van Evrea*:
>
> > '[I]t would be dangerous in the extreme to extend the operation and effect of a written Constitution by construction beyond the fair scope of its terms, merely because a restricted and more literal interpretation might be inconvenient or impolitic, or because a case may be supposed to be, to some extent, within the reasons which led to the introduction of some particular provision plain and precise in its terms.
> >
> > 'That would be *pro tanto* to establish a new Constitution and do for the people what they have not done for themselves' (49 NY 280, 281, *supra*).

Thus, the State's argument that the **[three-men-in-a-room budget deal-making]** method, in practical effect and accommodation, merely fosters the underlying purpose of article IV, §7 **[and article VII, §§1-4]** is unavailing (see, *New York State Bankers Assn. v Wetzler*, 81 NY2d 98, 104, *supra*).

If the guiding principle of statutory interpretation is to give effect to the plain language (*Ball v Allstate Ins. Co*., 81 NY2d 22, 25; *Debevoise & Plimpton v New York State Dept. of Taxation & Fin.*, 80 NY2d 657, 661; McKinney's Cons Laws of NY, Book 1, Statutes §94), '[e]specially should this be so in the interpretation of a written Constitution, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State' (*Settle v Van Evrea*, 49 NY, at 281, *supra*). These guiding principles do not allow for interstitial and interpretative gloss by the courts or by the other Branches themselves that substantially alters the specified law-making regimen. Courts do not have the leeway to construe their way around a self-evident constitutional provision by validating an inconsistent 'practice and usage of those charged with implementing the laws' (*Anderson v Regan*, 53 NY2d 356, 362, supra; *see also, People ex rel. Burby v Howland*, 155 NY 270, 282; *People ex rel. Crowell v Lawrence*, 36 Barb 177, *affd* 41 NY 137; *People ex rel. Bolton v Albertson*, 55 NY 50, 55, *supra*).

The New York Legislature's long-standing **[three-men-in-a-room budget deal-making]** practice has little more than time and expediency to sustain it. However, the end cannot justify the means, and the Legislature, even with the Executive's acquiescence, cannot place itself outside the express mandate of the Constitution. We do not believe that supplementation of the Constitution in this fashion is a manifestation of the will of the People. Rather, it may be seen as a substitution of the People's will expressed directly in the Constitution.

The Governor has been referred to as the 'controlling element' of the legislative system (4 Lincoln, The Constitutional History of New York, at 494 [1906]). The **[three-men-in-a-room budget deal-making]** practice unbalances the constitutional law-making equation… By the ultra vires **[]** method, the Legislature **[and Executive]** significantly suspends and interrupts the mandated regimen and modifies the distribution of authority and the complementing roles of the two law-making Branches. It thus undermines the constitutionally proclaimed, deliberative process upon which all people are on notice and may rely. Realistically and practically, it varies the roles set forth with such careful and plain precision in the constitutional charter…

Though some practical and theoretical support may be mustered for this expedient custom (*see, e.g.*, 4 Lincoln, *op. cit.*, at 501), we cannot endorse it. Courteous and cooperative actions and relations between the two law-making Branches are surely desirable and helpful, but those policy and governance arguments do not address the issue to be decided. Moreover, we cannot take that aspirational route to justify this unauthorized methodology.

The inappropriateness of this enterprise, an 'extraconstitutional method for resolving differences between the legislature and the governor,' also outweighs the claimed convenience (Zimmerman, The Government and Politics of New York State, at 152). For example, '[t]his procedure 'creates a negotiating situation in which,

under the threat of a full veto, the legislature **[through its Temporary Senate President and Assembly Speaker negotiate with]** the governor, thus allowing him to exercise *de facto* amendatory power'' (Fisher and Devins, *How Successfully Can the States' Item Veto be Transferred to the President?*, 75 Geo LJ 159, 182, quoting Benjamin, *The Diffusion of the Governor's Veto Power*, 55 State Govt 99, 104 [1982]).

Additionally, the **[three-men-in-a-room]** practice 'affords interest groups another opportunity to amend or kill certain bills' (Zimmerman, *op. cit.*, at 152), shielded from the public scrutiny which accompanies the initial consideration and passage of a bill. This 'does not promote public confidence in the legislature as an institution' because 'it is difficult for citizens to determine the location in the legislative process of a bill that may be of great importance to them' (*id.*, at 145, 152). Since only 'insiders' are likely to know or be able to discover the private arrangements between the Legislature and Executive when the **[three-men-in-a-room]** method is employed, open government would suffer a significant setback if the courts were to countenance this long-standing practice.

In sum, the practice undermines the integrity of the law-making process as well as the underlying rationale for the demarcation of authority and power in this process. Requiring that the Legislature adhere to this constitutional mandate is not some hypertechnical insistence of form over substance, but rather ensures that the central law-making function remains reliable, consistent and exposed to civic scrutiny and involvement.

…It is no justification for an extraconstitutional practice that it is well intended and efficient, for the day may come when it is not so altruistically exercised.

Appellants are entitled, therefore, to a judicial declaration that the **[three-men-in-a-room]** practice is not constitutionally authorized."

464. At bar, the unconstitutionality is *a fortiori* to that in *King* because, unlike with bicameral recall, no Senate and Assembly rules "reflect and even purport to create the [three-men-in-a-room] practice" (at p. 250) AND such budget deal-making by them, conducted behind-closed-doors, is UNIFORMLY derided as deleterious to good-government.

465. Further underscoring the unconstitutionality of three-men-in-a-room budget dealmaking is the Court of Appeals decision in *Campaign for Fiscal Equity, Inc. v. Marino*, 87 N.Y.2d 235 (1995), where the Court held that the Legislature's withholding of a passed-bill from the Governor violates Article IV, §7. In addition to resting on *King v. Cuomo*, the Court reiterated:

"The practice of withholding passed bills while simultaneously conducting discussions and negotiations between the executive and legislative branches is just

> another method of thwarting open, regular governmental process, not unlike the unconstitutional 'recall' policy, which, similarly, violated article IV, §7.", *id*, at 239.

466. Additionally, the "three-men-in-a-room" shrinks the two-branch 213-member legislature to just two members, flagrantly violating the constitutional design, which recognized in size a safeguard against corruption. *Cf.*, *The Anti-Corruption Principle*" by Zephyr Teachout, Cornell Law Review, Vol 94: 341-413.[37]

B. Three-Men-in-a-Room Deal-Making is Unconstitutional, *As Applied*

467. Three-men-in-a-room budget deal-making, *unwritten* in the Constitution, in statute, and in Senate and Assembly rules, is entirely unregulated.

468. That it takes place behind-closed-doors, out of public view, is a further constitutional violation – violating Article III, §10: "The doors of each house shall be kept open", as well as Senate and Assembly rules consistent therewith: Senate Rule XI, §1 "The doors of the Senate shall be kept

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[37] The framers were "obsessed with corruption" and "one of the most extensive and recurring discussions among the delegates [to the Constitutional Convention] about corruption concerned the size of the various bodies." It was the reason they made the House of Representatives larger than to the Senate because, in their view, "[t]he larger the number, the less the danger of their being corrupted."

> "Several delegates reiterated a relationship between size and corruption, suggesting that it was, or at least was becoming, conventional wisdom. Magistrates, small senates, and small assemblies were easier to buy off with promises of money, and it was easier for small groups to find similar motives and band together to empower themselves at the expense of the citizenry. Larger groups, it was argued, simply couldn't coordinate well enough to effectively corrupt themselves.
> …
> Notably, George Washington's only contribution to the Constitutional Convention arose in the context of a debate about the size of the House of Representatives.[fn.] First, it would take too much time for representatives in a large legislative body to create factions. Second, differences between legislators would lead to factional jealousies and personality conflicts if the same corrupting official tried to buy, or create dependency, across a large body. Because secrets are hard to keep in large groups, and dependencies are therefore difficult to create, the sheer size and diversity of the House would present a formidable obstacle to someone attempting to buy its members.
> Madison claimed that they had designed the Constitution believing that 'the House would present greater obstacles to corruption than the Senate with its paucity of members.'[fn.] …" (at p. 356).

open"; Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public" and Public Officers Law, Article VI "The legislature therefore declares that government is the public's business...".

469. Compounding the unconstitutional exclusion of the public from the three-men-in-a-room budget negotiations is that the three-men do not, thereafter, disclose the extent of their discussions and changes to budget bills. As illustrative, neither last year nor the year before was there any memo, itemized sheet, or report setting forth their agreed-to changes to the Legislative/Judiciary budget bills – each unamended bills prior to the three-men-in-a-room huddle, but, after the huddle, introduced as amended bills and referred to the fiscal committees. Nor were the changes identified by italics, underscoring, or bracketing in the amended bills' formatting – at least with respect to the Judiciary/Legislative budget bills.

470. That what they have done to alter massive budget bills, in secret and without full disclosure to legislators and the public, they then speed through the Legislature on a "message of necessity", dispensing with the requirement that each bill be "upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage", pursuant to Article III, §14, further compounds the constitutional violations.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray:

1. **For a declaratory judgment pursuant to State Finance Law §123 *et seq.* – Article 7-A, "Citizen-Taxpayer Actions":**

A. that the Legislature's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401/A.9001, is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because: (1) it is not based on "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house", as Article VII, §1 of the State Constitution expressly mandates; (2) it is missing "General State Charges"; and (3) its budget figures are contrived by the Temporary Senate President and Assembly Speaker to fortify their power and deprive members and committees of the monies they need to discharge their constitutional duties;

B. that the Judiciary's proposed budget for fiscal year 2016-2017, embodied in Legislative/Judiciary Budget Bill #S.6401/A.9001, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because: **(1)** the Judiciary budget is so incomprehensible that the Governor, the Senate majority and Senate minority, Assembly majority and Assembly minority cannot agree on its cumulative cost and percentage increase; **(2)** its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; and **(3)** the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a "slush fund" and

concealing relevant costs; **(4)** it has *sub silentio* enabled and will enable the funding of judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional;

C. that Legislative/Judiciary Budget Bill #6401/A.9001 is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – by its inclusion of reappropriations for the Legislature that were not part of its proposed budget and not certified by the Legislature as funds properly designated for reappropriation;

D. that Legislative/Judiciary Budget Bill #6401/A.9001 is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because nothing lawful or constitutional can emerge from a legislative process that violates Article VII, §§1-7 and Article IV, §7 of the New York State Constitution pertaining to the budget, and from statutes based thereon, including Legislative Law §32-a (*hearings for the public*); Legislative Law §53 and §54-a (*joint budget schedule; joint budget conference*), Legislative Law §54 (*summary of/description of changes*); State Finance Law §22-b (*report on enacted budget*), and from Senate and Assembly rules, *inter alia*: **(1)** Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) (*fiscal notes, fiscal impact statements, and introducer's memoranda*), applicable to defendant Governor by Senate Rule VII, §6 and Assembly Rule III, §2(g); **(2)** Senate Rule VII, §4 and Assembly Rule III, §§1, 2, 8 (*bills*); **(3)** Senate Rule VIII, §§3, 4, 5 and Assembly Rule IV, §§2, 4, 6, (*public meetings, recorded votes, committee reports*); **(4)** Senate Rule VII, §4(b); and Assembly Rule III, §§1(f) and 6 (*amendments)*; **(5)** Senate Rule VIII, §4(c) and Assembly Rule IV, §1(d) (*committee oversight*); **(6)** Senate and Assembly Permanent Joint Rule III (*budget*); **(7)** Senate and Assembly Joint Rule II, §1 (*conference committee*).

Also, nothing lawful or constitutional can emerge from a legislative process that violates Article III, §10 "Each house of the legislature shall keep a journal of its proceedings, and publish the same.... The doors of each house shall be kept open…"; Public Officers Law, Article VI; Senate Rule XI, §1, and Assembly Rule II, §1.

E. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation – is unconstitutional, *as written* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the statute unconstitutionally delegates legislative power by giving the Commission's judicial salary recommendations "the force of law"; **(2)** the statute unconstitutionally delegates legislative power without safeguarding provisions; **(3)** the statute violates Article XIII, §7; (4) the statute – a budget statute – violates Article VII, §6 (*anti-rider*) and, additionally, §§3 and 4 (*timeliness, content*); **(5)** the statute was fraudulently procured and without legislative due process;

F. that Chapter 60, Part E, of the Laws of 2015, establishing the Commission on Legislative, Judicial and Executive Compensation is unconstitutional, *as applied* – and the Commission's "force of law" judicial salary increase recommendations are null and void by reason thereof because: **(1)** the legislative defendants willfully and deliberately failed and refused to discharge their oversight duties with respect to the statute's constitutionality and operation; **(2)** the Commission concealed and did not determine the disqualification/disclosure issues before it pertaining to its members' actual bias and interest; **(3)** the Commission concealed and did not determine whether systemic judicial corruption is an "appropriate factor" barring judicial salary increases; **(4)** the Commission concealed and did not determine issues of fraud, including the complete absence of evidence to justify a

salary increase; **(5)** the Commission suppressed and disregarded the "appropriate factor" of citizen input and opposition;

G. that the Commission on Legislative, Judicial and Executive Compensation violated the express statutory requirements of Chapter 60, Part E, of the Laws of 2015 – and that its "force of law" judicial salary increase recommendations are null and void by reason thereof because, in violation of the statute: **(1)** the Commission made no finding and furnished no evidence that current "compensation and non-salary benefits' or "pay levels and non-salary benefits" of New York State judges are inadequate; **(2)** the Commission examined only judicial salary, not "compensation and non-salary benefits"; **(3)** the Commission did not "take into account all appropriate factors", such as systemic judicial corruption and citizen opposition – and made no claim that it had; **(4)** the Commission did not "take into account three of the six statutorily-listed "appropriate factors"; **(5)** the Commission's appointing authorities – defendants CUOMO, FLANAGAN, HEATIE, and former Chief Judge Lippman – constituted the Commission four months late, such that it had less than two months to execute its statutory charge; **(6)** the Commission did not utilize its significant investigative powers and available resources; .

H. that the behind-closed-doors Senate and Assembly majority and minority political conferences, which serve as the venue for discussing, debating, and voting on bills that are not being discussed, debated, voted on, and amended in committee are unconstitutional, as is Public Officers Law, §108.2 exempting them from the Open Meetings Law and FOIL;

I. that three-men-in-a-room, budget dealing-making is unconstitutional, *as unwritten and as applied.* Neither the Constitution, nor statute, nor Senate and Assembly

rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it violates Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so. That it takes place behind-closed-doors, out of public view, is a further constitutional violation.

2. **Pursuant to State Finance Law §123-e, for entry of a judgment permanently enjoining defendants from taking any action to enact Legislative/Judiciary Budget Bill #S.6401/A.9001 and to disburse monies pursuant thereto**, or, alternatively: (i) as to the legislative portion, enjoining enactment of its §1 appropriations and §4 reappropriations (pp. 1-9; 25-48) and disbursement of monies therefrom; and; (ii) as to the judiciary portion, enjoining enactment of its §3 reappropriations (pp. 22-24) and funding for "the force of law" judicial salary increase for fiscal year 2016-2017 recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation and disbursement of monies pursuant thereto;

3. **Pursuant to State Finance Law §123-g, for costs and expenses, including attorneys' fees;**

4. **For such other and further relief as may be just and proper**, including restoring public trust by referring to prosecutorial authorities the evidence furnished by this verified second supplemental complaint as it establishes, *prima facie*, grand larceny of the public fisc and other corrupt acts, requiring that the culpable public officers and their agents be criminally prosecuted and removed from office, without further delay.

Elena Ruth Sassower

ELENA RUTH SASSOWER

Sworn to before me this
23rd ~~21st~~ day of March 2016

Susan A. Janiszak

Susan A. Janiszak
Notary Public-State of New York
04JA6209391
Qualified in Albany County
Commission expires 07/27/20 17

VERIFICATION

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

I am the individual plaintiff in the within action and director of the corporate plaintiff, Center for Judicial Accountability, Inc. I have written the annexed verified second supplemental complaint and attest that same is true and correct of my own knowledge, information, and belief, and as to matters stated upon information and belief, I believe them to be true.

ELENA RUTH SASSOWER

Sworn to before me this
~~23rd~~ 21st day of March 2016

Notary Public

Susan A. Janiszak
Notary Public-State of New York
04JA6209391
Qualified in Albany County
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