Appellate Division Docket #527081

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, THIRD DEPARTMENT

To be Argued by:
Elena Ruth Sassower
(15 Minutes Requested)

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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-Appellants,

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

-against-

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

Defendants-Respondents.

APPELLANTS' REPLY BRIEF

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

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INTRODUCTION

The respondents' brief, signed by Assistant Solicitor General Frederick Brodie, on behalf of Attorney General Barbara Underwood, and additionally bearing the name of his direct supervisor, Assistant Solicitor General Victor Paladino, is, from beginning to end, "a fraud on the court". This is readily apparent from the most cursory comparison to appellants' brief – to which Mr. Brodie refers the Court in his footnote 1, on page 1, stating:

> "For a full account of plaintiff's claims, we urge the Court to read her brief and the record, available on plaintiff's website, www.judgewatch.org."[1]

Appellants' brief furnished 70 pages of facts and law, requiring this Court to answer, in the negative, its overarching "Question Presented": "Is the lower court's appealed-from November 28, 2017 decision and judgment defensible – indeed, constitutitional?" (Br. iv) – and to answer, in the positive, its six subsidiary "Questions" (Br. iv-v) – all guideposts to the Court's answering the overarching "Question".

NONE of the facts, law, or legal argument presented by appellants' brief are denied or disputed by Mr. Brodie's 62-page brief, which, to cover-up that

[1] Mr. Brodie does not furnish the location, on CJA's website, where the brief and record may be found. The direct link is: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/appeal/7-4-18-appellants-brief.htm.

extraordinary fact, essentially conceals the entire content of appellants' brief – and its "Questions Presented". As such, respondents' brief is no opposition, *as a matter of law*, and is frivolous and fraudulent in urging that "Supreme Court's judgment should be affirmed" (at p. 2), which is also its conclusion (at p. 62). Under the uncontested facts and law presented by appellants' brief, the ONLY way the judgment can be "affirmed" is for this Court to cover up, and be collusive in, the corruption of any cognizable judicial process below, by replicating it, on appeal.

Below is a synopsis of what is before the Court with respect to each of the six subsidiary "Questions Presented" by appellants' brief.

Appellants' First Subsidiary Question --
& Summarization of What Occurred Below

> "1. Was the lower court duty-bound to have disqualified itself for demonstrated actual bias – and is its November 28, 2017 decision and judgment [R.31-41] and all prior decisions void by reason thereof?
>
> > *The lower court concealed appellants' particularized demonstration of its actual bias in denying their requests that it disqualify itself.*" (underlining in the original).

Mr. Brodie's brief does not identify this subquestion – nor dispute appellants' summarization of what occurred below. The closest he comes is by two paragraphs, at the end of his brief, his **Point III-B (at pp. 58-60) "Justice Hartman Properly Denied Plaintiff's Disqualification Motion"**. The first paragraph (at pp. 59-60)

reads:

> "…plaintiff has tendered no 'demonstrable proof of bias,' *see Modica v. Modica*, 15 A.D.3d 635, 636 (2d Dep't 2005), beyond Justice Hartman's rulings (*See, e.g.*, R1009.) Bias 'will not be inferred' from adverse decisions. *Knight v. N.Y. State & Local Ret. Sys.*, 266 A.D.2d 774, 776 (3d Dep't 1999); *accord S.L. Green Props., Inc. v. Schaoul*, 155 A.D.2d 331 (1st Dep't 1989). '[T]he fact that a judge issues a ruling that is not to a party's liking does not demonstrate bias or misconduct.' *Gonzalez v. L'Oreal USA, Inc.*, 92 A.D.3d 1158, 1160 (3d Dep't), *lv. dismissed*, 19 N.Y.3d 874 (2012)."

This is utter fraud. The standard for disqualification for actual bias is, as Mr. Brodie's cited cases reflect, "demonstrable proof of bias" – and appellants' 70-page brief furnished same, in abundance, with respect to Judge Hartman's "rulings" – as to which nothing need be "inferred" about her "adverse decisions" because it is spelled out, with virtual line-by-line precision, including by "legal autopsy"/analyses that appellants furnished Judge Hartman in support of their motions for her disqualification for demonstrated actual bias [R.554-577; R.1002-1008 (at ¶¶5-8, 10-11); R.1293-1319, R.9-30], each establishing her decisions to be objectionable NOT because they are "adverse" and "not to [appellants'] liking, but because they are "so totally devoid of evidentiary support as to render [them] unconstitutional under the Due Process Clause" of the United States Constitution, *Garner v. State of Louisiana*, 368 U.S. 157, 163 (1961); *Thompson v. City of Louisville*, 362 U.S. 199 (1960) – each one "a criminal fraud", "falsifying the record in all material respects to grant defendants relief to which

they were not entitled, *as a matter of law*, and to deny plaintiffs relief to which they were entitled, *as a matter of law*" (underlining in the original) [R.554; R.1293; R.9-10].

As highlighted by appellants' brief, the accuracy of their "legal autopsy"/analyses was uncontested below, both by Assistant Attorneys General Kerwin and Lynch and by Judge Hartman – and Mr. Brodie's brief does not deny this or even attempt to belatedly show any inaccuracy in a single one, instead concealing all of them, while citing to cases which, in fact, all support appellants' entitlement to Judge Hartman's disqualification for demonstrated actual bias, as to which appellants' showing of PROOF is uncontested and incontestable.

Mr. Brodie's second paragraph (at p. 60) then states:

> "In any event, Justice Hartman's rulings were even-handed. For example, she permitted plaintiff's faulty service of process (R55); denied defendants' motion to dismiss the Sixth Cause of Action (R57-58); and denied defendants' request for sanctions based on plaintiff's repetitive, meritless filings (R40). *See Smith*, 63 N.Y.2d at 68."

Again, utter fraud – and this is established by the record. As to Mr. Brodie's first two examples of Judge Hartman's supposed "even-handedness", such are exposed by appellants' "legal autopsy"/analysis of her December 21, 2016 decision [R.566-567/R.55; R.572-573/R.57-58] and, as to the third, by appellants' August 25, 2017 reply/opposition memorandum of law [R.1338; 1339-1340; 1365-1375], covered up by

her November 28, 2017 decision [R.40/R.19].

Suffice to say that the above two fraudulent paragraphs followed three other fraudulent paragraphs (at pp. 58-59), also under the heading "Justice Hartman Properly Denied Plaintiff's Disqualification Motion" – none more egregious than the first paragraph which outrightly lies that no "statutory ground for recusal exists". This, in flagrant disregard that "interest" is a "statutory ground", proscribed by Judiciary Law §14.

Appellants' Second Subsidiary Question –
& Summarization of What Occurred Below

> "2. Is the lower court's concealment of appellants' requests that it disclose its financial interests and relationships with defendants – and its failure to make any disclosure – sufficient, in and of itself, to mandate vacatur of its November 28, 2017 decision and judgment – and of its underlying prior decisions – *as a matter of law*?
>
> *The lower court concealed plaintiffs' requests for disclosure – of which it made none.*"

Mr. Brodie's brief does not identify this subquestion – nor dispute appellants' summarization of what occurred below. In fact, Mr. Brodie buries the threshold issue of judicial disclosure – never mentioning it until page 60 of his brief. There, in the last of the seven paragraphs under his **Point III-B (at pp. 58-60) "Justice Hartman Properly Denied Plaintiff's Disqualification Motion"**, he states:

> "Finally, plaintiff was not entitled to disclosure of Justice Hartman's 'financial interests and relationships with defendants' (Br. iv). Under certain circumstances, a judge who disqualifies herself '*may* disclose on the record' the basis for disqualification. 22 N.Y.C.R.R. §100.3(F) (emphasis added). Such disclosures are not required. Nor does plaintiff have a right to Justice Hartman's personal information beyond what is mandated by 22 N.Y.C.R.R. §40.2.[fn]"

Another utter fraud. §100.3F of the Chief Administrator's Rules Governing Judicial Conduct has nothing to do with whether a judge who disqualifies himself may or must disclose the basis of his disqualification. §100.3F is entitled "Remittal of disqualification" and requires disclosure by a judge who, because of reasonable questions as to his impartiality, is disqualified by §100.3E of the Chief Administrator's Rules. Judge Hartman's "financial interest and relationships with defendants" raised reasonable questions, disqualifying her, *as a matter of law,* pursuant to §100.3E, as to which she could not sit on the case – including pursuant to the "rule of necessity" – without complying with the disclosure procedure laid out in §100.3F, embracing its requirement that she assert her belief that she could be impartial. At bar, and in face of appellants' memoranda of law [R.515-517; R.973-979; R.1334], citing to the Commission on Judicial Conduct's own reiteration of the mandate of disclosure, Judge Hartman not only made no disclosure and concealed appellants' requests for same, but, to avoid her duty of disclosure, LIED in her May 5, 2017 decision in purporting that she had "no interest in this litigation…or affinity to any party hereto" [R.50] and

offered up not even a pretense that she believed herself impartial.

Appellants' Third Subquestion – & Summarization of What Occurred Below

"3. Is the lower court's concealment of appellants' three threshold issues pertaining to the attorney general – and its failure to adjudicate same – sufficient, in and of itself, to mandate vacatur of its November 28, 2017 decision and judgment – and of its underlying prior decisions – *as a matter of law*?

The lower court concealed and did not adjudicate any of the below three threshold issues:

a) appellants' entitlement to an order imposing sanctions and costs upon respondents' counsel, the attorney general, for litigation fraud – and referring him and the culpable attorneys under his supervision to disciplinary and criminal authorities;

b) appellants' entitlement to an order disqualifying respondents' counsel, the attorney general, himself a respondent, from representing his co-respondents for conflict of interest;

c) appellants' entitlement to an order pursuant to Executive Law §63.1 and State Finance Law Article 7-A directing the attorney general to represent appellants and/or to intervene on their behalf – including *via* independent counsel."

Mr. Brodie's brief does not identify this three-part subquestion – nor dispute appellants' summarization of what occurred below. It does, however, contain three disparate sections, roughly pertinent to the three interrelated threshold issues relating to the attorney general – each section utterly fraudulent. Likewise, an additional section.

These are:

Mr. Brodie's Point III-A (at pp. 56-58) "Plaintiff Has Failed to Plead or Prove a Fraud" cites to, without reciting, "Br. iv". It is here that Mr. Brodie addresses the attorney general's litigation fraud – by repeating it. Without disputing the essence of the subquestion, *to wit*, that each of Judge Hartman's decisions concealed the threshold issue appellants raised as to the attorney general's litigation misconduct and made no adjudication with respect thereto, Mr. Brodie effectively concedes the absence of any adjudication by Judge Hartman by citing to none – and quoting from, instead, Judge McDonough's August 1, 2016 and October 9, 2014 decisions in the prior citizen-taxpayer action [R.321; R.320], implying that they discredit the legitimacy of appellants' unadjudicated claims in this citizen-taxpayer action. He does this knowing that the fraudulence of Judge McDonough's decisions is established by appellants' "legal autopsy"/analysis of them, annexed as Exhibit G to their September 2, 2016 verified complaint herein [R.338-373] – and that its accuracy was uncontested by the attorney general and Judge Hartman. Nor does he reveal that the record on appeal in this citizen-taxpayer action furnishes PROOF substantiating the Exhibit G "legal autopsy"/analysis – most importantly, appellants' May 16, 2014 memorandum of law in the prior citizen-taxpayer action [R.1123-1160], demonstrating the attorney general's pre-answer dismissal motion – the same as Judge McDonough

granted by his October 9, 2014 decision [R.326-333] – to be "not just frivolous, but a 'fraud on the court'", entitling appellants to all the relief sought by their May 16, 2014 cross-motion [R.1120-1122], including its five branches pertaining to the attorney general.

Likewise appellants' memoranda of law in this citizen-taxpayer action [R.471-526; R.922-988; R-1328-1382] and their Exhibit E "legal autopsy"/analysis, annexed to their June 12, 2017 order to show cause [R.1014-1038] establish, line-by-line, the attorney general's litigation fraud herein – and these were highlighted throughout appellants' brief. Mr. Brodie confronts NONE of these fact-specific, law-supported evidentiary presentations – each particularizing and proving fraud by the attorney general's office – and NOT limited to "fraudulent concealment", which is the thrust of Mr. Brodie's bad-faith argument, resting on bald characterizations for which he provides not a single example from either this citizen-taxpayer action or the prior citizen-taxpayer action.

In any event, at bar, "the distinction between concealment and affirmative misrepresentation fade[s] into legal insignificance, both being fraudulent", *Hadden v. Consolidated Edison Company of New York*, 45 NY2d 466, 470 (1978). As Mr. Brodie may be presumed to know, but does not acknowledge to the Court:

> "Fraud may be committed by suppression of the truth, that is, by concealment, as well as by positive falsehood or mirespresentation.[fn] Where a failure to disclose a material fact is calculated to induce a false belief, the distinction between concealment and affirmative misrepresentation is tenuous; both are fraudulent.[fn]…" §91: Concealment-Generally: 60 A New York Jurisprudence 2nd (2001).

Mr. Brodie's Point III-C (at p. 61) "Attorney General Underwood Has No Conflict of Interest" cites to, without reciting, "Br. iv". It is here that Mr. Brodie offers up a single, conclusory four-sentence paragraph, not identifying or rebutting appellants' memoranda of law pertaining to Attorney General Schneiderman's conflict of interest [R.519-520; R.981-982; R.1334] – nor disputing that Judge Hartman's decisions concealed this threshold issue, without adjudication – which is the essence of this subquestion relating to the attorney general's disqualification for conflict of interest.

Mr. Brodie's Point I-E (at pp. 20-21) "Plaintiff is Not Entitled to Representation by the Attorney General" cites to, without reciting, "Br. v". Here, too, Mr. Brodie avoids the essence of this subquestion, *to wit*, that each of Judge Hartman's decisions concealed the threshold issue of appellants' entitlement to the attorney general's representation/intervention pursuant to Executive Law §63.1 and State Finance Law Article 7A (§123 *et seq.*) – without adjudication. He does not deny this, nor confront appellants' memoranda of law on the subject [R.517-520; R.980-982;

R.1334]. Instead, he offers up a truncated quotation from Executive Law §63.1, skipping over its operative first sentence that the attorney general's duty is to:

> "Prosecute and defend all actions and proceedings in which the state is interested, Norand have charge and control of all the legal business of the departments and bureaus of the state, or of any offices thereof, which requires the servies of attorney or counsel, in order to protect the interest of the state…" (underlining added),

so as to disingenuously argue, based on his quoting of the second sentence of Executive Law §63.1, that "Under that clause, the decision of whether to participate is left to the Attorney General's discretion." (underlining added).

Mr. Brodie does not claim that there is any "discretion" as to the first sentence, namely, that the attorney general must determine "the interest of the state" as the predicate for his decision as to whether to prosecute or defend. Nor does Mr. Brodie contest the obvious: that the "interest of the state" standard also controls the attorney general's litigation role in citizen-taxpayer actions, as State Finance Law Article 7-A, expressly contemplates that the attorney general will be the plaintiff or act on behalf of plaintiffs to protect taxpayer monies. Likewise, with respect to Executive Law §71(1), which, as evident *on its face*, and as Mr. Brodie concedes, merely "authorizes" the attorney general "to litigate in support of the constitutionality of the State's statutes", not requiring him to do so. Not surprisingly, he identifies no guideposts by which the attorney general's "discretion" is to be exercised and judicially-reviewed.

Finally, and further demonstrating Mr. Brodie's fraud pertaining to this subquestion is his **Point I-A (at pp. 13-14) "The Appeal Should Be Dismissed as to CJA Because an Entity Cannot Appear Without Counsel"**. In addition to falsely purporting that the individual appellant is representing the corporate appellant, implying that she is seeking to do so, Mr. Brodie conceals that both are unrepresented and that the individual appellant, from the outset and repeatedly, invoked their entitlement to representation by the attorney general, pursuant to Executive Law §63.1 and State Finance Law Article 7-A – with no adjudication thereof by Judge Hartman or by Judge McDonough before her.

Appellants' Fourth Subsidiary Question – & Summarization of What Had Occurred Below

> "4. Based on the evidentiary record and controlling law, was the lower court duty-bound to grant appellants summary judgment on each of the ten causes of action of their September 2, 2016 verified complaint [R.99-130, R.159-219] – and the preliminary injunction and TRO sought by their September 2, 2016 order to show cause [R.80-82, R.131]?
>
> > *The lower court did not base its adjudications on the record or controlling law in disposing of any of the ten causes of action of appellants' September 2, 2016 verified complaint – and in denying the requested injunctive relief.*"

Mr. Brodie's brief does not identify this subquestion – nor dispute appellants' summarization of what had occurred below. Indeed, his brief nowhere purports, let alone shows, that Judge Hartman's December 21, 2016 decision [R.527-532],

disposing of the ten causes of action of appellants' September 2, 2016 verified complaint [R.87-392] and denying their accompanying order to show cause for a preliminary injunction [R.80-84] – to which she adhered throughout the course of the proceedings before her – to be consistent with the evidentiary record and controlling law.

Thus, his "Statement of the Case" simply recites (at p. 10) that upon respondents' "pre-answer motion", Judge Hartman, by a December 21, 2016 decision, "dismissed nine of the complaint's ten causes of action for failure to state a claim", thereupon summarizing its grounds for doing so – and then reciting that, as to the sixth cause of action (at p. 11), "consist[ing] of five sub-causes challenging the Second Commission's authority on various grounds", the "Supreme Court could not 'say that plaintiff's claim is not cognizable' on 'the record before it.' (R533.)". Not identified by Mr. Brodie is anything about the record then before Judge Hartman, most particularly, that appellants responded to respondents' "pre-answer motion", including with a request for summary judgment on all ten of their causes of action pursuant to CPLR §3211(c) [R.429-526].

Similarly terse is his "Statement of the Case" (at pp. 10-11) as to Judge Hartman's June 26, 2017 decision denying appellants' CPLR §3212 motion for summary judgment on their sixth cause of action – stating that it: "Analyz[ed] each of

the Sixth Cause's of Action's five subparts, [and] concluded that plaintiff had not established her entitlement to judgment on any of them. (R72-77.)"

As for Judge Hartman's grant of summary judgment to respondents on appellants' sixth cause of action, by her November 28, 2017 decision and judgment, Mr. Brodie's "Statement of the Case", also makes no reference to the evidence or law that was before Judge Hartman, in stating (at pp. 12-13):

> "Supreme Court held that the 2015 enabling legislation contained standards and reasonable safeguards, consistent with the Constitution. (R35-36.) Further, while the Constitution forbids decreases in judicial salaries, the relevant provision does not mention increases. (R37.) The budget bill was timely because Article VII, §3 of the Constitution allows the submission of such bills 'at any time' with the consent of the legislature. (R38.) Provisions creating the Second Commission were properly included in the budget bill because they 'relate[d] specifically to items of appropriation in the 2015 budget' for judicial pay. (R.39.)"

And neither in Mr. Brodie's "Statement of the Case" nor the balance of his brief does he mention the "legal autopsy"/analyses of Judge Hartman's December 21, 2016 decision and of her June 26, 2017 decision [R.554-577; R.1293-1319], which appellants' furnished in support of their motions for her disqualification for demonstrated actual bias, nor mention appellants' "legal autopsy"/analysis of Judge Hartman's November 28, 2017 decision and judgment [R.9-30], set forth by their "Argument" (at pp. 46-69) – 19 pages of which are beneath the title heading: "Judge

Hartman's Indefensible and Fraudulent Grant of Summary Judgment to Defendants on Plaintiffs' Sixth Cause of Action" (at pp. 50-69).

It is by concealing appellants' "legal autopsy"/analyses and the entire content of their brief bearing the title "Whither the Ten Causes of Action?" (at p. 1) – and by disconnecting from the threshold integrity issues relating to Judge Hartman and the attorney general – that Mr. Brodie offers up "Argument" pertaining to the ten causes of action, untethered to black-letter adjudicative principles and steeped in other falsehoods and distortions of fact and law. Most germane are his Point I-B and Point II.

Mr. Brodie's Point I-B (at pp. 14-16) "Plaintiff's First through Fourth Causes of Action and Her Claims for Relief Based on Years Before 2016-2017 are Barred by the Prior Action". This is a deceit. Appellants' first through fourth causes of action are not "a collateral attack on Justice McDonough's rulings", as Mr. Brodie purports (at p. 14). Judge McDonough's applicable ruling, in the prior citizen-taxpayer action, was to deny appellants leave to supplement, with causes of action pertaining to fiscal year 2016-2017, their eight causes of action pertaining to fiscal years 2014-2015 and 2015-2016 – all of which he dismissed, in whole or in part, on "evidence" that he did not identify and which does not exist (Br. at p. 43; R.355-366]). His rationale for denying appellants leave to supplement with their proposed "causes

of action 9-12", *to wit,* that they were "patently devoid of merit" [R.321] – which is not a CPLR §3211 ground for dismissal – is *dicta* and extraneous to his denial of leave to supplement, which was his ruling. Appellants did not need to appeal Judge McDonough's denial of leave to supplement in order to commence a new citizen-taxpayer action, presenting their causes of action pertaining to the 2016-2017 fiscal year, as these were never before Judge McDonough except as a motion for leave to supplement, which he denied.

Likewise deceitful is Mr. Brodie's hedged assertion "the instant complaint is barred to the extent it challenges budgets prior to 2016-2017" (underlining added). Appellants' first three causes of action challenge the legislative and judiciary proposed budgets and the governor's combined legislative/judiciary budget bill for the 2016-2017 fiscal year, with their fourth cause of action challenging the whole of the budget for fiscal year 2016-2017.

Moreover, as Mr. Brodie well knows, but does not recite (at p. 15), *res judicata* requires "a judgment rendered jurisdictionally and unimpeached for fraud", with collateral estoppel additionally requiring that the party against whom it is asserted had "a full and fair opportunity" to litigate, *Ryan v. NY Tel. Co*, 62 N.Y.2d 494 (1984). Judge Hartman's December 21, 2016 decision [R.527-535] neither cited to, nor made findings with respect to, *res judicata* or collateral estoppel in dismissing appellants'

first four causes of action, each of whose pleaded allegations [R.99-108] – required to be accepted as true on a motion to dismiss for failure to state a cause of action – alerted her to the due process issues, as to which appellants' incorporated Exhibit G "legal autopsy"/analysis of Judge McDonough's decisions in the prior citizen-taxpayer action [R.338-373] furnished proof, which she concealed. "[F]raud vitiates everything which it touches", *Hadden v. Consolidated Edison Company of New York,* 45 N.Y.2d 466 (1978).

Mr. Brodie's Point II (at pp. 24-55) "Supreme Court Properly Granted Judgment to Defendants". It opens with a single sentence: "Apart from the procedural and substantive defects noted in Point I, each of plaintiff's 10 causes of action fails on its merits." Mr. Brodie does not identify what he means by "on the merits" and how that accords with this Court's duty, on appeal, with respect to each of appellants' ten causes of action – as to which he furnishes NO law.

The Court's appellate function and the adjudicative standards governing same, set forth in 10A Carmody-Wait 2d (2013), are, as follows:

> §70:350: "Orders concerning pleadings":
>
> "On appeal from an order dismissing a complaint for insufficiency, the question before the appellate court is only one of pleading;[fn] the appellate court is confined solely to a consideration of the allegations of the complaint,[fn] and must determine from the allegations whether the complaint states a cause of action.[fn] … The scope of review is limited;[fn] the appellate court is not called upon to decide whether the plaintiff will

ultimately succeed at trial.[fn] The court must accept the complaint's allegations as true, accord the plaintiff the benefit of every possible favorable inference, and determine whether the facts as alleged fit within any cognizable legal theory.[fn]…"

§70:351: "Summary judgment".

"The function of the court on an appeal from a denial of summary judgment is to review the record to determine if any issues of fact existed;[fn] issue finding, rather than issue determination, is the standard of review.[fn] An appellate court may search the record on an appeal of a summary judgment motion and grant relief where appropriate,[fn] including summary judgment to the opposing party, even in the absence of a cross-motion.[fn]"

New information or issues may not be raised for the first time in an appeal of the grant[fn] or denial[fn] of summary judgment. Similarly, a request directed to the appellate court for summary judgment on an issue that was not the subject of a motion before the motion court is improper.[fn]

…

The Appellate Division will review a denial of a motion for summary judgment as of the time the motion was made…"

§70:419: "On appeal from order concerning judgment on pleading or dismissal of complaint".

"A party may move for judgment dismissing one or more causes of action asserted against him or her on any of several grounds.[fn] Also, any party may move for summary judgment in any action after issue has been joined.[fn] On appeal from an order made upon such a motion, or a motion for judgment on the pleading or a motion for dismissal of the complaint, or from the judgment entered pursuant to such an order, the allegations of the pleading, if it is claimed to be insufficient, must be assumed to be true.[fn]

On a defendant's motion to dismiss for failure to state a claim, the appellate court must accept the facts as alleged in the complaint as true and accord the plaintiff the benefit of every possible favorable inference.[fn] On appeal of a motion to dismiss, the facts contained in the petition must be construed in their most favorable light.[fn] On appeal from an order granting a motion to dismiss, the appellate court must accept the

> submissions offered in opposition to the motion as true for purposes of determining whether there is any cognizable cause of action.[fn] Also, on appeal from summary judgment, the reviewing court must accept the pleadings of the opponent of the motion as true and make a decision on the facts most favorable to the opponent.[fn] Such a pleading must also be given the benefit of a liberal construction,[fn] and it must be assumed that the allegations thereof can be established by evidence available to the pleader.[fn]
>
> …Also, on appeal from an order granting a defendant's motion for summary judgment, the most favorable inferences must be drawn in favor of both the complaint and the affidavits in support thereof.[fn] Likewise, on appeal from an order granting a motion to dismiss, the court accords plaintiff the benefit of all favorable inferences that may be drawn from his or her pleadings…"

In lieu of furnishing this Court with such relevant treatise authority – or such caselaw as reflected by its copious footnotes – Mr. Brodie offers up 31 pages that purport to address, *seriatim,* the ten causes of action – cherry-picking their allegations, which he distorts and falsifies, as, likewise, the evidence and law pertinent thereto. Nothing in any of these 31 pages refutes appellants' "legal autopsy/analyses" of how their ten causes of action were disposed of by Judge Hartman [R.554-577; R.1293-1319; R.9-30] and – as to the first four causes of action, by Judge McDonough [R.338-373] – depriving appellants of any semblance of due process and the summary judgment to which they were entitled as to each.

Herewith is a "legal autopsy"/analysis of Mr. Brodie's 31 pages pertaining to appellants' ten causes of action:

Mr. Brodie's Point II-A (at pp. 24-25) "First Cause of Action: Legislature's Budget" misrepresents and conceals the facts and law pertaining to appellants' first cause of action [R.99-102/R-124 (at 1A)] [R.159-162/R.220 (at 1A)][2]. The only aspects of this cause of action that Mr. Brodie cherry-picks for the Court are itemization and certification – as to which he conceals that, with respect to each, the unconstitutionality is *facial*, in the first instance As stated by the first cause of action [R.159: ¶303]:

> "…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." (italics and underlining in the original).

Thus, at issue, is NOT "the degree of itemization" – as Mr. Brodie purports – but whether, the legislative budget is, *on its face* and in fact, the "itemized estimates of the financial needs of the legislature" that it does NOT purport to be. In any event, neither the Court of Appeals decision in *Saxton v. Carey*, 44 N.Y.2d, 545, 550-51 (1978), nor the Appellate Division, First Department's decision in *Urban Justice Ctr. v. Pataki*, 38 A.D.3d 20, 30 (1st Dep't 2006) – cited by Mr. Brodie – involves what the

[2] The corresponding first and fifth causes of action from the prior citizen-taxpayer action are at R.254-260/R.269 (at 1A) and R.291-294/R.311(1A). Appellants' "legal autopsy"/analysis of how they were disposed of by Judge McDonough is at R.361-365].

first cause of action here particularizes: "the fashioning of 'slush fund' budgets for purposes asserted and shown to be illegitimate, illegal, unconstitutional, and fraudulent." [R.1140]. Certainly, had Mr. Brodie cited to any of the pertinent paragraphs of the first cause of action – which he does not – it would have been evident that to the passing extent that they refer to insufficient, inadequate itemization, it is a manifestation of the unconstitutional control that the Temporary Senate President and the Assembly Speaker have arrogated to themselves – substituting their role as certifiers of the "itemized estimates of the financial needs of the legislature" to fashioners of a "slush fund" legislative budget from which they fortify their power, at the expense of member offices and legislative committees, whose inadequate funding, under leadership control, renders them unable to discharge their constitutional function and to do so independently. Indeed, the constitutional challenge to the legislative budget that the first cause of action presents is both *as written and as applied* – with the *as applied* challenge altogether concealed by Mr. Brodie.

Finally, quite apart from the fact that neither *Rattley v. N.Y. City Police Dep't*, 96 N.Y.2d 873, 875 (2001) nor *Lazzari v. Town of Eastchester*, 20 N.Y.3d 214, 222 (2012), cited by Mr. Brodie, interpret the certification required by Article VII, §1 – each of those cases involve certifications which, irrespective of their form and

language, identify the thing being certified. The one-sentence December 1, 2015 letter, signed by defendants Temporary Senate President Flanagan and Assembly Speaker Heastie[3], not only does not use the word "certify", but does not use the word "itemized estimates of the financial needs of the legislature" – which is the certification that Article VII, §1 requires. Nor do those cases appear to involve – as here – a *prima facie* showing – that would make any purported certification a fraud, i.e. no "General State Charges" and rigged, unchanging figures, etc. [R.1143-1144].

Mr. Brodie's Point II-B (at pp. 26-27) "Second Cause of Action: Judiciary Budget and 'Interchange Provision'" misrepresents appellants' second cause of action [R.103-104/R.124-125 (at 1B); R.162-167/R.220-221 (at 1B)][4] to make it appear that its entire content relates to the constitutionality of the "interchange provision", which it does not.[5] He then demonstrates that he has NO defense to

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[3] Mr. Brodie's Supplemental Record on Appeal does NOT provide the December 1, 2015 signed letter and accompanying legislative budget for fiscal year 2016-2017 that had been appellants' Exhibits 24-d and 24-e, substantiating their above-quoted ¶303 [R.159] – notwithstanding he had them [SR.356] Peculiarly, he furnishes only the signed letters and transmitted proposed legislative budgets for fiscal year 2014-2015 [SR.5-16] and fiscal year 2015-2016 [SR.77-93]. The signed letter for fiscal year 2017-2018 is at R.765.

[4] The corresponding second and sixth causes of action in the prior citizen-taxpayer action are at R.260-262/R.269 (at 1B) and R.294-300/R.311-312 (at 1B). Appellants' "legal autopsy"/analysis of how they were disposed of by Judge McDonough is at R.361-365].

[5] Mr. Brodie's representation, in his Point II-A (at p. 24), that the Judiciary's budget was certified – for which he provides record references "(R761-764; SR19-21, 96-98)" – is, as he knows, flagrantly misleading, as appellants' verified complant alleged [R.142-143: ¶¶252-254] that the Judiciary's certification did not encompass the §3 "reappropriations" of its single budget bill,

appellants' explication of its unconstitutionality. This would be evident had he quoted the specifics of the second cause of action, beginning with why the phrase "notwithstanding any provision of law" is "vague" – namely because, as set forth at ¶323 [R.165], the phrase "any provision of law" would include "the New York State Constitution – and such is unconstitutional, *on its face*, as no statute can override the Constitution." Tellingly, he does not cite "Among the laws superseded", the constitutional provisions the second cause of action identifies as within that category, *to wit*, "Article VII, §1, §4, §6, and §7" (¶324 [R.165]) – nor give any argument addressed to the superseding of safeguarding statutory provisions, such as Judiciary Law §215(1) and State Finance Law §51, nor support his inference that *Hidley v. Rockefeller*, 28 N.Y.2d 439, 447-49 (1971), is not germane, nor support his assertion that its "analysis was superseded by *Saxton* and the other decisions cited in Point II(A)".

Mr. Brodie's Point II-C (at pp. 27-29) "Third Cause of Action: Reappropriations" presents successive deceits concerning appellants' third cause of action [R.104-106/R.125 (at 1C)] [R.168-169/R.221 (at 1C)],[6] beginning with his

(thereafter §3 of the governor's legislative/judiciary budget bill) – and such was uncontested before Judge Hartman, as likewise, uncontested before Judge McDonough – including in the context of appellants' orders to show cause for preliminary injunctions and TROs [R.81; R.637].

[6] The corresponding third and seventh causes of action in the prior citizen-taxpayer action are at R.263/R.270 (at 1C) and R.300-302/R.312 (at 1C). Appellants' "legal autopsy"/analysis of how

pretense (at p. 27) that it is "abandoned". Appellants' brief (pp. 5-7, 42-43) identified Judge Hartman's fraudulent dismissal of their third cause of action, denying them the summary judgment to which they were entitled – relief the brief expressly seeks on appeal (p. 69).

Mr. Brodie then pretends (p. 27) "The Third Cause of Action was properly dismissed in any event" – without confronting the fraudulence of Judge Hartman's dismissal of the third cause of action, which she based on Judge McDonough's dismissal of supposedly identical causes of action in the prior citizen-taxpayer action – a dismissal Judge McDonough predicated on "'documentary evidence' exclusively" he did not identify and that does not exist – and which could not be the basis for Judge Hartman's dismissal of appellants' third cause of action, as AAG Kerwin had not furnished any documentary evidence in moving to dismiss pursuant to CPLR §3211(a)(7) "the pleading fails to state a cause of action" [R.403-410a].

Instead, Mr. Brodie makes misleading, frivolous argument to avoid having to confront what is at issue – and which he does identify (at p. 28), *to wit*, that the Governor's combined legislative/judiciary budget bill contained "reappropriations [that] were not part of the Legislature's proposed budget submitted to the Governor

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they were disposed of by Judge McDonough is at R.361-365].

(R168)" and – additionally – were "not certified (R124)" – and which, further, did not appear suitable for re-appropriation and which, when the legislative/judiciary budget bill emerged, amended, from the "three men in a room" budget deal-making – "was amended to alter almost 90 of these legislative reappropriations – most of which were reduced, sometimes dramatically" [R.105: ¶45] – without the changes being indicated by notations on the bill, as required [R.106: ¶46(c)].

Mr. Brodie's Point II-D (at pp. 29-31) "Fourth Cause of Action: Adoption Process" purports that appellants' fourth cause of action [R.106-108/R.125-126 (at 1D)] [R.170-187/R-221-222 (at 1D)] was "properly dismissed" – without denying or disputing the facts about the fraudulence of its dismissal, highlighted by appellants' brief (at pp. 5-7, 42-43).[7]

Acknowledging (at p. 29) that appellants' fourth cause of action "alleges that the process by which the 2015-2016 (sic) budget was adopted violated rules of the Legislature and various sections of the Legislative Law", Mr. Brodie purports that violation of legislative rules is "beyond judicial review", citing *Heimbach v. State*, 59 N.Y.2d 891, 892 (1983), and *Urban Justice Center*, 38 A.D. 20, 27 (1st Dep't 2006). Neither case stands for the proposition that Mr. Brodie impliedly would have this

[7] Appellants' "legal autopsy"/analysis of Judge McDonough's fraudulent summary judgment dismissal of their corresponding fourth cause of action is at R.358-360 and of his fraudulent dismissal of their corresponding eighth cause of action is at R.361-366.

Court adopt, *to wit*, that the Legislature, being constitutionally enabled to make its own rules is thereupon free to violate the rules it has made. Indeed, as stated by this Court in *Seymour v. Cuomo*, 180 A.D.2d 215, 217 (1992):

> "The rules established by the Senate and Assembly to govern the proceedings in each house (NY Const. art 3, §9) are the functional equivalent of a statute." [R-496, R.1146].

As for legislative law, Mr. Brodie does not claim that the Legislature is free to violate it – and effectively concedes that it cannot do so by FALSELY purporting, in his unsworn brief, including with FALSE record references, that the Legislature complied with statutes that the fifth cause of action expressly identifies as having been violated. Thus,

- Mr. Brodie states (at p. 30): "Second, a Conference Committee was convened in accordance with Legislative Law §54-a(1). (*See* SR383-387). Each house individually also used committees in considering the budget bill. (*See* R758)"

  Both sentences are false.

  Legislative Law §54-a(1) requires that a conference committee or committees be established "within ten days following the submission of the budget by the governor pursuant to article seven of the constitution…" and appellants' fourth cause of action identifies that no budget conference committee/s were so-established [R.106 (¶49); R.176-177 (¶¶359-362)] – and PROVED it by their Exhibit 28-b: the 2016 joint legislative budget schedule. Mr. Brodie's Supplemental Record on Appeal does not include this Exhibit 28-b, which he has [SR.357], but, instead, the legislative budget schedules for 2015 and 2014 [R.381-382], which PROVE the truth of appellants' allegations for those prior years.

Nor does his cited "R758" establish that "Each house individually also used commitees", including as to the single budget bill for the fiscal year 2017-2018 budget to which it relates – S.2003-D/A.3003-D "Aid to Localities" – inasmuch as its introductory recitations falsify what legislative records PROVE as to violations recited by appellants' March 29, 2017 verified supplemental complaint. Indeed, appellants' May 15, 2017 memorandum of law [R.934; R.951-965] identify that AAG Kerwin's Exhibit 8 – which is "R758" – furnished by her in opposition to appellants' March 29, 2017 order to show cause, as being among her nine exhibits substantiating their entitlement to its granting.[8]

- Mr. Brodie states (at p. 30): "Third, the budget schedules required by Legislative Law §54-a(2) were, in fact, issued. (See SR380-381.)"

  This is deliberately misleading.

  Appellants' fourth cause of action did not allege that budget schedules were not issued, as Mr. Brodie falsely implies. Rather it alleged [R.176-177 (¶¶359-361)] – and evidentiarily PROVED by the 2016 legislative budget schedules that appellants annexed as their Exhibit 28-b, but which Mr. Brodie has NOT included in his Supplemental Record on Appeal [SR.357] – that the budget schedules violated Legislative Law 54-a.

- Mr. Brodie states (at p. 30): "Fourth, public hearings on the budget bill were held. (SR332-348.)".

  This is false.

  Appellants' fourth cause of action did not allege that public budget hearings were not held, as Mr. Brodie falsely implies. Rather, it alleged – and evidentiarily PROVED – that the Legislature's 2016 budget hearings violated and subverted Legislative Law §32-a [R-172-173 (¶¶344-349)], including by denying the individual appellant the opportunity to testify.

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[8] *Cf.* Appellants' sixth cause of action (subcause E) includes among its allegations the false and fraudulent introductory recitations in budget bill #S.4610-A/A.6721-A [R.197-199].

- Mr. Brodie states (at pp. 30-32): "an email submitted by plaintiff indicates that the Legislature did issue reports on the budget"[fn] (*See* SR373.)".

  This is false.

  The referred-to e-mail that Mr. Brodie includes in his Supplemental Record on Appeal [SR.373] does NOT relate to any reports pertaining to the fiscal year 2016-2017 budget that is the subject of appellants' September 2, 2016 verified complaint – and does NOT rebut any of the allegations of its fourth cause of action as to the absence of the reports statutorily required by Legislative Law §54-a and Senate Finance Law 22-b [R.107-108: (¶53(a),(d),(e)); R.185-186:¶383]).

Mr. Brodie's Point II-E (at pp. 31-32) "Fifth Cause of Action: Compliance with Article VII" contradicts the sworn allegations of appellants' fifth cause of action [R.108-109/R.126-127 (at 1E, F, G)] [R.177-186/R.214-219, R.221-223 (at 1D)], purporting that Article VII, §§4, 5, and 6 were "not violated" by respondents, when the fifth cause of action alleges the violations – ALL of whose particulars are concealed. As for the three examples of respondents' supposed non-violations:

- Mr. Brodie asserts (at p. 31): "Art. VII, §4 by its terms does not apply to 'appropriations for the legislature or judiciary,' which are at issue here."

  This is false and misleading.

  Firstly, "at issue here" is NOT the legislative/judiciary budget bill, but all the Governor's budget bills for executive appropriations – as to which the sworn allegations of appellants' fifth cause of action particularized the violations and substantiating evidence.

  Secondly, notwithstanding Article VII, §4 excludes the legislative and judiciary budgets from its restrictions, appellants' fifth cause of action identifies that the Legislature purports and proceeds as if Article VII, §4 – and the Court of Appeals decision in *Pataki v. Silver* –

constrain it from amending the judiciary budget [R.181-182 (¶¶370-374)];

- Mr. Brodie asserts (at p. 31): "Plaintiff supplies no evidence or specific allegation of how [Article VII, §5] was purportedly violated."

  This is false.

  The fifth cause of action particularizes the violations of Article VII, §5, in tandem with the violations of Article VII, §4, *to wit*, that the budget bills were being amended with increases and additional appropriations directly to the budget bills, not separately stated;

- Mr. Brodie's asserts (at p. 32): that appellants' argument pertaining to Article VII, §6 violations "presumably is that creation of the Second Commission did not relate to a specific appropriation. But it did – it related directly to the appropriation for the judiciary that covered judicial salaries. (*See* Point II[F][4].)"

  This is false, in three respects.

  First, the Article VII, §6 violations, presented by the fifth cause of action, pertain to the budget bills for fiscal year 2016-2017 and involve the insertion therein of policy and ethics legislations, having no specific relation to any "particular appropriation" in the budget bills [R.182-183 (¶¶375-276)];

  Second, the Second Commission was NOT created by any budget bill for fiscal year 2016-2017, but, as identified by appellants' sixth cause of action [R.188; R.194; R.197], by a budget bill for fiscal year 2015 – #S.4610-A/A.6721-A, which became Chapter 60 Part E of the Laws of 2015;

  Third, Chapter 60, Part E, of the Laws of 2015 did not "relate[] directly to the appropriation for the judiciary that covered judicial salaries" – nor could it, as the Commission's earliest salary increases would NOT be part of the fiscal year 2015-2016 budget, thereby rebutting Mr. Brodie's referred-to "Point II[F][4]" (at p. 42).

Mr. Brodie's Point II-F (at pp. 32-49) "Sixth Cause of Action: The Second Commission" misrepresents and conceals the sworn allegations of appellants' sixth cause of action [R.109-112/R.127 (at 1H)] [R.187-201/R.222-223 (1E, G)]. He starts by purporting that appellants have "failed to meet th[e] rigorous standard" for a declaration that Chapter 60, Part E, of the Laws of 2015 is unconstitutional – when, in fact, their sixth cause of action so resounding meets that "rigorous standard" that he cannot and does not reveal its specifics – nor the record with respect to its five sub-causes, chronicled by appellants' brief and its culminating 19-pages under the title heading "Judge Hartman's Indefensible and Fraudulent Grant of Summary Judgment to Defendants on Plaintiffs' Sixth Cause of Action" (Br. at pp. 50-69).

As to appellants' first sub-cause [R.110, R.188-192], Mr. Brodie purports to address it under the heading, "1. The Legislature Permissibly Delegated the Increase of Judicial Compensation to the Second Commission" (at pp. 33-35). He conceals ALL its allegations, other than that it challenges the constitutionality of the statute giving the Commission's recommendations "the force of law".

As to appellants' second sub-cause [R.110-111, R.192-193], Mr. Brodie purports to address it under the heading "2. The Delegation of Authority to the Second Commission Contained Adequate Safeguards" (at pp. 36-38). He identifies that it challenges the statute's delegation of legislative power to the Commission as being

"without safeguarding provisions", but then distorts the only two specifics he furnishes:

- he misrepresents that it challenges the Commission as "not sufficiently diverse in ideology (R192)" – when it does nothing of the sort, challenging the numeric size of the Commission [R.192];

- he conceals what it says about the unconstitutionality of raising the salaries of judges "who should be removed from the bench for corruption or incompetence [R.110, 193]", namely,

> "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*." (R.110-111 (¶64), underlining in the original).

He additionally inserts false and misleading argument (at pp. 36-37) that "Similarly-structured commissions have been held constitutional", but provides only a single example – the "commission to address the problem of excess hospital capacity", established by Chapter 63, Part E, of the Laws of 2005 and challenged by the *McKinney* and *St. Joseph Hospital* cases. Such argument belonged in his response to the first subcause – including his footnote 7 (at p. 37) which, without details, identifies appellants' citation to "a single-judge dissent" from the Appellate Division, Fourth Department in the *St. Joseph Hospital* case, as to which Mr. Brodie states "(*see* R190-191)."

R.190-191, which is part of appellants' first sub-cause, contains two paragraphs pertaining to that "single-judge dissent"—the second of which contradicts his assertion of other "[s]imilarly-structured commission**s**" (bold and underlining added). These two paragraphs are, as follows:

> "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).[fn]"

As to the third sub-cause [R.111, R.193-194], Mr. Brodie addresses it under the heading "3. Increasing Judicial Salaries Does Not Violate the Constitution" (pp. 38-40), without revealing that his presentation is, in essence, Judge Hartman's *sua sponte*, argument, by her June 26, 2017 decision [R.74-76] in denying appellants summary judgment, on which she then relied, by her November 28, 2017 decision and judgment [R.37], in granting summary judgment to respondents.

As to the fourth sub-cause [R.111, R.194-196], Mr. Brodie purports to address it under the heading: "4. The Enabling Legislation Did Not Violate Article VII, §§2, 3, or 6 of the New York Constitution" (at pp. 41-42). He begins with the misrepresentation that at issue are "technical requirements for budget bills", as if to minimize them. He then proceeds to even more brazen falsehoods:

- that this "sub-cause is moot" because "the 2015 budget was passed and the appropriations made in the bill have expired."

  This is false.

  The "enabling legislation" that established the Commission is Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – and it has nothing to do with appropriations, and no expiration – indeed, by its terms, it establishes a new commission every four years;

- that there is "no evidence" that the 2015 budget bill was not timely introduced and that "the record shows that the 2015 budget bill was timely, having been introduced January 21. (SR284.)"

  This is false.

  Chapter 60, Part E, of the Laws of 2015 was NOT "introduced January 21" and is NOT "(SR284.)". Mr. Brodie's cited SR284 is legislative/judiciary budget bill #S.2001-a/A.3001-a, for fiscal year 2015-2016, that he has included in his Supplemental Record on Appeal for no discernible reason. What he has NOT included is #S4610-a/A-6721-a, which became Chapter 60, Part E, of the Laws of 2015 – notwithstanding he had it [SR.358, Ex. 35-c]. However, even the unamended bill, #S.4610/A.6721, which he has included [SR.366], shows, *on its face*, that it was NOT "introduced January 21", but – as alleged by appellants' subcause [R.195-196: ¶¶410-412] – on March 31, 2015.

- that there is no violation of Article VII, §3 because – as purported by Judge Hartman – "the Legislature's consideration and passage of the bill is effective

consent in itself" [R.38].

This is false.

As stated at appellants' brief (at p. 59), "the facts in the record PRECLUDE 'effective consent', *as a matter of law*…", these being the facts pertaining to the fraud particularized by the fifth sub-cause – and Mr. Brodie has not contested the accuracy of appellants' rebuttal to Judge Hartman;

- that Chapter 60, Part E, of the Laws of 2015 is not an unconstitutional rider, having "no relation at all" to the budget expenditures because salary increases "would be appropriated from the budget".

This is false.

The Commission's earliest salary increases would NOT take effect until April 1, 2016 and, therefore, would be part of the budget for fiscal year 2016-2017, not fiscal year 2015-2016.

As to the fifth sub-cause [R.112, R.197-201], Mr. Brodie purports to address it under the heading: "5. The Enabling Legislation Was Not Procured by Fraud" (at pp. 43-44). He does not reveal that respondents did not previously offer up a defense to this sub-cause – as before Judge Hartman they deceitfully purported that her December 21, 2016 decision had dismissed it, which she then adopted by her June 27, 2017 decision [R.77] and November 28, 2017 decision and judgment [R.34], in disregard of appellants' showing as to the true facts. This is particularized by appellants' brief – and it is with no acknowledgment of this by Mr. Brodie that he now demonstrates why respondents' fraud before Judge Hartman was necessary: they have NO defense to this sub-cause. Indeed, NONE of the facts particularized by this sub-cause, entitled:

"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" [R.112, R.197], are confronted by Mr. Brodie, but for a single one. He states:

> "Although she alleges that Senator DeFrancisco falsely stated at the hearings (sic) that the Governor's bill had been 'submitted a long time ago' (R199), when read in context, that statement refers to an earlier version of the bill (see R198-199)."

This is utterly false, and Mr Brodie does not elaborate on the alleged "context" to which he baldly refers. It is nowhere evident from his referred-to "(R198-199)", which are the pages of this sub-cause containing a transcription of the video of the Senate Finance Committee's March 31, 2015 meeting on "Senate Bill 4610-A" at which, as recited by the sub-cause, its then chair, Senator DeFrancisco, in collusion with Ranking Member Krueger, gave a disingenuous, false response to Senator Squadron's question as to when the original budget bill #S.4610 was introduced. The date of introduction was NOT, as Senator DeFrancisco purported, "a long time ago" – and this is established by the original, unamended budget bill #S.4610, bearing a March 31, 2015 date of introduction, which Mr. Brodie includes in his Supplemental Record on Appeals [SR.365-366].

In the complete absence to any refutation of the sworn allegations of this sub-cause and its referred-to substantiating proof as to the fraud by which budget bill

#S.4610/A.6721 was enacted, Mr. Brodie implies that fraud perpetrated on members of the Legislature to secure a bill's enactment does not give rise to a cause of action by "The People of the State of New York", in whose name and on whose behalf the members are enacting the bill (New York State Constitution, Article III, §13). He states:

> "And Senator DeFrancisco is not a defendant in this case. Nor has plaintiff pleaded or proven that Senator DeFrancisco's statement, or any other, was made by defendants with intent to deceive her. And she could not have relied detrimentally on any such statement. To the contrary, plaintiff was not a member of the Legislature, and thus did not rely on any of the bill descriptions that she claims were misleading. (See R197-200). Notably, the Legislature has not claimed it was bamboozled."

This is materially false – in addition to being unsupported by any law. Senator DeFrancisco, as a member of the Legislature, is a defendant in this case – and, as particularized by the pleadings, it is he, along with other legislators in leadership, who are doing the "bamboozl[ing]" of both rank-and-file legislators and the People of the State of New York. All these defendant legislators are representatives of the People – and a fraud perpetrated by legislators on legislators is a fraud upon the People, who, of course, bear the consequence of a fraudulently and unconstitutionally enacted bill.

Mr. Brodie's Point II-G (at pp. 44-47) "Seventh Cause of Action: More Claims Regarding the Second Commission" purports to address appellants' seventh cause of action [R.112-114/R.127-128 (at 1I)] [R.201-212/R.222 (at 1F)]. Concealing

that it challenges the constitutionalitly of Chapter 60, Part E, of the Laws of 2015, *as applied*, he purports that it "contains a miscellany of attacks on the Second Commission's composition and actions" and "none…can endure even cursory appellate scrutiny." This is false. Appellate scrutiny begins with the record that was before Judge Hartman – a record and result summarized by appellants' brief (at pp. 9-10, 44), without contest by Mr. Brodie.

Judge Hartman's dismissal of this cause of action – on the ground that the Commission is not a party – referred-to by Mr. Brodie's footnote 9 (at p. 44) – cannot be sustained whether or not dismissal on that ground is applicable to an action under State Finance Law §123-b, which Mr. Brodie purports "is unclear". Apart from the fact that Judge Hartman supplied no law for what she did, *sua sponte,* in dismissing this cause of action because the Commission was not a party, she made no finding that the Commission was a "necessary party", or that there would be any prejudice to giving appellants leave to join the defunct Commission, and made no claim that the four subparts of the seventh cause of action and its prefatory paragraphs did not state a cause of action.

As for appellants' prefatory paragraphs to this cause of action, Mr. Brodie's acknowledgment that the "enabling statute does not impose oversight duties on defendants" with respect to Commission on Legislative, Judicial and Executive

Compensation concedes, but does not answer, whether this renders the statute unconstitutional – which is what these prefatory paragraphs assert.

The four subparts, from their very titles and their particularizing content, reflect further aspects of appellants' viable seventh cause of action – all concealed by Mr. Brodie's distorted cherry-picking of allegations and disregard of the evidentiary proof that appellants furnished in substantiation. These titles are:

> "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" [R.202-203]
>
> "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" [R.203-204]
>
> "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" [R.204-209]
>
> "D. *As Applied*, a Commission that Suppresses and Disregards the Input of Taxpaying Citizens, Particularly in Opposition to Salary Increases, is Unconstitutional" [R.209-212]

Mr. Brodie's Point II-H "Eighth Cause of Action: The Second Commission's Consideration of the Statutory Factors" purports to address appellants' eighth cause of action [R.114/R.129 (at 1L)] [R. 212-213/ R.222-223 (at 1F)]. As with his other headings, he conceals the title of the cause of action, which is:

> "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"

On its face, the title reflects a viable cause of action – and, as highlighted by appellants' brief (at p. 44), Judge Hartman did not dismiss the eighth cause of action for failure to state a cause of action, but, rather, on her own *sua sponte* ground, unsupported by law, that the Commission was not a party. Mr. Brodie's argument in this section does not purport that no cause of action is stated by this cause of action, but, rather, that "The record disproves this claim." Tellingly, before Judge Hartman, AAG Kerwin did not move to dismiss pursuant to CPLR §3211(a)(1) "a defense is founded upon documentary evidence", but pursuant to CPLR §3211(a)(7) "the pleading fails to state a cause of action".

The sole "documentary evidence" upon which Mr. Brodie relies is the Commission's December 24, 2015 report, as to which Mr. Brodie purports, in his unsworn brief (at p. 48). that it "expressly discussed every factor identified in the statute…" and that it "referenced each of the necessary factors". This is false – and, indeed, Mr. Brodie does not show that the paragraphs of appellants' cause of action itemizing the violations of statutory factors are rebutted by the Commission's report –

or that the further particulars set forth by appellants' referred-to 12-page "Statement of Particulars" are not substantiated. This he could have readily done, including by furnishing the 12-page "Statement of Particulars" in his Supplemental Record on Appeal, which he did not do [SR.367, listed Exhibit 40]. Nor does he furnish any legal authority for his proposition (at p. 48) that caselaw pertaining to parole board decisions is applicable to the facial insufficiency of the Commission's report, let alone to the facts establishing the violations reflected by the facial insufficiency.

Mr. Brodie also fabricates and distorts other allegations of this cause of action – as for example (at p. 49), his inference that appellants made allegations concerning the "absence of a recommendation on non-salary benefits…" – which they did not; or pertaining to the appointment of the Commission's members; or FOIL. This, to purport and/or imply that the allegations of this cause of action do not state a cause of action, when, collectively, if not individually, they do.

Mr. Brodie's Point II-I (at pp. 50-53) "Ninth Cause of Action: Budget Negotiations" purports to address appellants' ninth cause of action [R.115/R.126 (at 1F)] [R.214-219/R.223-224 (at 1I)]. In fact, Mr. Brodie largely replicates Judge Hartman's fraudulent dismissal of this cause of action by her December 21, 2016 decision [R.531-532] – itself based on the deceits of AAG Kerwin. This is demonstrated by appellants' "legal autopsy"/analysis of Judge Hartman's dismissal of

the ninth cause of action, recited by their brief (at p. 10-13). Notwithstanding the accuracy of this "legal autopsy"/analysis is uncontested by him – he nonetheless regurgitates what has already been discredited. Thus, he starts by reiterating and insisting that the cause of action is moot. He then conceals that the criteria for assessing the unconstitutionality of a practice is NOT whether the Constitution prohibits it, but whether it unbalances the constitutional design – thereupon concealing and distorting the unbalancing which the ninth cause of action describes.

He does, however, make some new claims. To deflect the applicability of 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", he purports that it "does not apply to meetings of individual staffers, who do not constitute 'a house of the legislature'" – in other words, he removes the Temporary Senate President and Assembly Speaker from the "three men in the room" scenario. Additionally, he purports: "More fundamentally, plaintiff has not alleged or proven that the doors of either house were ever improperly closed" – in other words, giving literal meaning to the phrase. He also whips out the Open Meetings Law, whose citation by appellants was in the context of the legislature's closed-door party conferences that substitute for open legislative committee action – embraced by their fifth cause of action – to imply that appellants had asserted it in the "three men in a room" context, which they had not.

Mr. Brodie's Point II-J (at pp. 53-55) "Tenth Cause of Action: District Attorney Salaries" purports to address appellants' tenth cause of action [R.115-123/R.130 (at 1N)]. Asserting that "None of plaintiff's theories for invalidating this appropriation can withstand analysis", he then repeats the grounds upon which Judge Hartman's December 21, 2016 decision dismissed the ninth cause of action – without contesting the accuracy of appellants' "legal autopsy"/analysis" thereof [R.570-571], embodied in their brief (at pp. 13-14), establishing these grounds to be sham and fraudulent.

Apart from that, Mr. Brodie offers up 1-1/2 paragraphs relating to violations of Article VII, §§4, 6, and 6, which have nothing to do with this cause of action, but to the fifth – and whose inclusion, if not inadvertent, is simply to provide filler. Certainly, filler is the only explanation for his final paragraph, whose citation to "Br. 64-65" has nothing to do with this cause of action – and which, moreover, does not substantiate his text: "Finally, plaintiff's suggestion that district attorneys are overpaid…"

* * *

And, additionally, as to the Preliminary Injunction, Sought by Appellants' September 2, 2016 Order to Show Cause –

Inasmuch as Mr. Brodie's brief does not identify appellants' fourth subquestion and description of what occurred below, it also does not identify or dispute that portion of the subquestion as relates to Judge Hartman's duty to have granted appellants the preliminary injunction sought by their September 2, 2016 order to show cause [R.80-82], denied by her December 21, 2016 decision [R.534].

Mr. Brodie's ONLY mention of this preliminary injunction is his **Point I-F (at pp. 21-22) "Plaintiff's Requests for Preliminary Injunctive Relief Were Properly Denied".** This is also the only mention he makes of the preliminary injunction and TRO sought by appellants's March 29, 2017 order to show cause [R.635-638] – encompassed, on this appeal, by their fifth subquestion – and which Judge Hartman's June 26, 2017 decision had denied [R.69].

His Point I-F starts out by repeating (at p. 21):

> "Supreme Court properly denied plaintiff's repeated requests for a temporary restraining order (TRO) and preliminary injunction (R80, 635; *see* Br. v)."

However he furnishes not a single fact in substantiation – such as the basis upon which Judge Hartman denied each of the two preliminary injunctions and the TRO that was

before her with the second, nor the state of the record that was before her with respect to each – although this is the only way for this Court to determine, on appeal, "whether Supreme Court exceeded or abused its discretion" (at p. 22).[9]

As to the state of the record before Judge Hartman when she denied the preliminary injunction by her December 21, 2016 decision [R.534], it is particularized by appellants' September 30, 2016 reply memorandum of law [R.471-526] – five pages of which pertain to their entitlement to the preliminary injunction because they had met the three requisite factors for the granting of same [R.509-514]. The accuracy of those five pages is uncontested by respondents, who had repeated opportunities to contest it, in response to appellants' "legal autopsy"/analysis of the December 21, 2016 decision, which included a section pertaining to its denial of appellants' preliminary injunction [R.574-575]. Instead, Mr. Brodie states (at p. 22):

> "As shown above and in Point II, plaintiff's claims are legally meritless and thus unlikely to succeed."

This is false. The predecessor pages of Mr. Brodie's brief and his Point II do not refute appellants' showing, by their brief, of their entitlement to summary judgment on the

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[9] As to how "discretion" is evaluated, Mr. Brodie also furnishes no instructive principles, as, for instance:

> "Judicial discretion is necessarily broad – but it is not absolute. Abuse occurs when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them." *Independent Oil & Chem. Wkrs v.*

ten causes of action of their September 2, 2016 verified complaint. To the contrary. Mr. Brodie's brief reinforces it – and thereby underscores that appellants have met the first condition for the granting of a preliminary injunction he has identified (at p. 21) "a showing of probable success on the merits".

Tellingly, as to the second condition, "irreparable injury", Mr. Brodie offers NO argument. Indeed, he cannot, in view of his **Point I-G (at p. 23) "A Rollback of Judicial Salary Increases Would be Unconstitutional"** that once the judicial salary increases have taken effect, removing them violates the prohibition of Article VI, §25 against diminishing judicial compensation. In so doing, he concedes that preliminary injunctions/TROs were in order to prevent irremovable prospective judicial salary increases from taking effect.

Mr. Brodie also has no argument to support the third condition, the balance of equities, as he furnishes nothing but a conclusory single sentence: "Moreover, the balance of equities favors the individual judges and district attorneys who have received and relied upon the salary increases in question." (p. 22) – plainly insufficient to overcome the right of taxpayers burdened with salary increases which are unconstitutional and unlawful.

Procter & Gamble, 864 F.2d 927, 929 (1st Cir. 1998).

Appellants' Fifth Subsidiary Question – & Summarization of What Occurred Below

"5. Based on the evidentiary record and controlling law, was the lower court duty-bound to grant appellants all branches of their March 29, 2017 order to show cause – and the preliminary injunction and TRO it sought [R.635-638]?

The lower court did not base its denial of appellants' March 29, 2017 order to show, with preliminary injunction and TRO, on the record or controlling law.

Mr. Brodie's brief does not identify this subquestion – nor dispute appellants' summarization of what occurred below. No one section of Mr. Brodie's brief addresses the seven branches of relief sought by appellants' March 29, 2017 order to show cause [R.635-638]. There are, however, three germane disparate sections:

As to appellants' first branch: for summary judgment on all five sections of their sixth cause of action, Mr. Brodie's brief has no section, other than his Point II-F "Sixth Cause of Action: The Second Commission" (at pp. 32-49), analyzed above at pp. 30-37.

As to appellants' second branch: for leave to supplement their September 2, 2016 verified complaint pertaining to fiscal year 2016-2017 [R.87-392] with their March 29, 2017 verified supplemental complaint pertaining to fiscal year 2017-2018 [R.671-743], Mr. Brodie's brief has a pertinent section, **Point I-C (at pp. 16-18) "Supreme Court Properly Denied Leave to Supplement the Complaint with**

Claims Based on the 2017-2018 Budget". Notwithstanding its title, it makes NO showing that Judge Hartman's denial was proper. Instead, it recites (at pp. 17-18) "Supreme Court denied leave because similar claims for 2015-2016 and 2016-2017 had already been denied. (R69.)" – without comment as to the state of the record before Judge Hartman with respect to those "similar claims".

As for appellants' third, fourth, fifth, sixth, and seventh branches: for declaratory, injunctive, and other further relief, Mr. Brodie's brief has a pertinent section pertaining only to the injunctive relief, his Point I-F, "Plaintiff's Requests for Preliminary Injunctive Relief Were Properly Denied" (at pp. 21-22), discussed above at pages 44-46.

None of the aforesaid three Points confront, at all, the state of the record before Judge Hartman on appellants' March 29, 2017 order to show cause – notwithstanding it is particularized by appellants' culminating May 15, 2017 reply affidavit and memorandum of law in further support [R.788-921, R.922-988] – and then summarized by their analysis of Judge Hartman's June 26, 2017 decision, denying their March 29, 2017 order to show cause "in its entirety" [R.1293-1382]. These establish the facts and law that were before Judge Hartman mandating her granting of the order to show cause "in its entirety", including, in addition to the preliminary injunction, the TRO.

Appellants' Sixth Subsidiary Question – & Summarization of What Occurred Below

"6. Based on the evidentiary record and controlling rules of judicial and attorney conduct, was the lower court duty-bound to grant appellants the 'other and further relief' specified by their September 2, 2016 verified complaint and March 29, 2017 verified supplemental complaint?, *to wit*:

> 'restoring public trust by referring to prosecutorial authorities the evidence particularized by [these verified pleadings] as [they] establish[], *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.' [R.131, at ¶4; R.742, at ¶4, italics in the original].
>
> *The lower court concealed and did not determine its duty with respect to this 'other and further relief'*."

Mr. Brodie's brief does not identify this subquestion – nor dispute appellants' summarization of what occurred below. The closest Mr. Brodie comes to addressing the subject is by the last section of his brief – his **Point III-D (at p. 61) "Plaintiff's Requests for Sanctions and an Investigation Must Be Denied"**. Its single paragraph reads in full:

> "The Court should deny plaintiff's request for sanctions and an investigation (Br. iv, 2, 47). Such actions would be unwarranted because plaintiff's claims are procedurally and substantively barred (*see* Point I), as well as deficient on the merits (*see* Point II), and she has shown no impropriety (*see* Point III[A]-[C]). In any event, it is improper to ask the Court to 'requir[e]' that unnamed 'public officers and their agents' be 'criminally prosecuted and removed from office' (Br. v). Criminal actions may be commenced only through proscribed legal procedures.

See C.P.L. §100.05."

Beyond the obvious, that Mr. Brodie has here transposed the question, which related to Judge Hartman's duty, to one pertaining to this Court, his reliance on Points I, II, and III of his brief is utter fraud. As hereinabove demonstrated, those Points are founded on Mr. Brodie's concealment and misrepresentation of fact and law. This includes as to the particularized allegations of appellants' verified pleadings and the evidentiary proof cited and supplied – such not only stating causes of action to which appellants have summary judgment, but establishing, *prima facie*, grand larceny of the public fisc and other corrupt acts. §100.3D of the Chief Administrator's Rules Governing Judicial Conduct is unequivocal as to what is mandated under such circumstances, namely "appropriate action". Indeed, to further obscure that the verified pleadings are requesting referral of the record EVIDENCE, Mr. Brodie falsely purports that appellants are seeking to have the Court 'requir[e]' that unnamed 'public officers and their agents' be 'criminally prosecuted and removed from office' (Br. v)" – which they are not.

* * *

The foregoing disposes of all of Mr. Brodie's "Argument" (at pp. 13-61), excepting his **Point I-D (at pp. 18-19) "The Complaint is Moot"**. It, too, rests on deceits – first and foremost concealing that this is a citizen-taxpayer action, pursuant to State Finance Law Article 7-A, expressly entitling a citizen-taxpayer "to maintain an action for equitable or declaratory relief" (§123-b) – as to which there are ten causes of action, each meeting the recognized exceptions to mootness: (1) likelihood of repetition; (2) a phenomenon typically evading review; (3) involves a novel issue or significant or important questions not previously passed upon; (4) involves a matter of widespread public interest or importance or of ongoing public interest; *Winner v. Cuomo*, 176 A.D.2d 60 (3rd Dept. 1992); *Schulz v. Silver*, 212 A.D.2d 293 (3rd Dept. 1995); 43 New York Jurisprudence §25 "Exceptions to mootness doctrine". Indeed, the odyssey of this citizen-taxpayer action and its predecessor – involving successive budget years repeating the identical constitutional, statutory, and rule violations of prior years and an initial commission pay raise statute thereafter replaced, *via* constitutional violations, by a second commission pay raise statute, not only materially identical, but expanded in scope – exemplifies not merely a "likelihood of repetition", but its certainty, continuing in the present, all "evading review", because of the corrupting of the judicial process – including subversion of the safeguarding citizen-

taxpayer action statute – by judges, in collusion with the attorney general, each suffering from immense financial and other conflicts of interest.

Instead, Mr. Brodie's Point I-D purports that because "the authority to spend funds for fiscal year 2016-2017 has lapsed" – and because Judge Hartman denied appellants' motion to supplement the complaint to encompass fiscal year 2017-2018, the lawsuit – which his brief nowhere even identifies to be a citizen-taxpayer action:

> "is moot because 'the primary relief requested' – an injunction against funding judicial pay raises and district attorney salaries as provided in the 2016-2017 budget (R131) – is 'no longer attainable.' *Matter of Cannon v. City of Watervliet*, 263 A.D.2d 920, 921 (3d Dep't), *lv. denied*, 94 N.Y.2d 756 (1999)."

This is multiply false.

First, substantial reappropriations from the fiscal year 2016-2017 budget, whose constitutionality and lawfulness appellants' verified complaint challenged, were reappropriated in whole or in part by the fiscal year 2017-2018 and 2018-2019 budgets and disbursement can yet be enjoined.

Second, Judge Hartman's June 26, 2017 denial of appellants' motion to supplement [R.69] – which she based, exclusively on her December 21, 2016 decision dismissing nine of the ten causes of action of appellants' verified complaint – cannot be justified, as the December 21, 2016 decision is – as demonstrated before Judge Hartman and on this appeal [R.554-577] – fraudulent. As the authority to spend

monies for the fiscal year 2017-2018 budget has not yet lapsed, its expenditures can yet be enjoined, both from its appropriations and from its reappropriations;

Third, the supposed "'primary relief requested' – an injunction against funding judicial pay raises and district attorney salaries" – is just as "'attainable'" now, as it was in the 2016-2017 budget, as those same commission-based judicial pay raises and the district attorney salary reimbursement arising therefrom, are part of the current budget and will be part of every future budget, until judicially-voided – relief appellants seek and are entitled to by virtue of their sixth, seventh, and eighth causes of action.

Mr. Brodie's "Preliminary Statement, "Question Presented, and "Statement of the Case"

The 12 pages that precede Mr. Brodie's "Argument" consist of a "Preliminary Statement" (at p. 1), a "Question Presented" (at p. 2), and a "Statement of the Case" (at pp. 2-13), which are largely false and misleading – and so-established by the record of this citizen-taxpayer action. This includes as to the Court of Appeals decision in *Maron v. Silver*, 14 NY3d 230 (2010), pertaining to judicial pay raises.

Mr. Brodie's "Question Presented" and "Statement of the Case" are also improper. Pursuant to §1250.8(c) of the Practice Rules of the Appellate Division, "only if the respondent disagrees with the statement of the appellant", "shall…[its]

brief…include "a counterstatement of the questions involved or a counterstatement of the nature and facts of the case". Mr. Brodie's brief does not contest the accuracy of appellants' "Statement of the Case" upon which their "Questions Presented" are based – mor contest either their "Questions Presented" or summarizations of what Judge Hartman did with respect to each. As such, he could not properly offer his own "Question Presented" and Statement of the Case". That he does so is simply to further deceive by giving the illusion that respondents have grounds of opposition, when, in fact, they have none. In any event, both are worthless. His "Question Presented" (at p. 2) is altogether meaningless in asking "Did Supreme Court act properly in granting judgment to defendants on plaintiff's 10 causes of action?" – where his answer, in the affirmative, simply summarizes what Judge Hartman's decisions did, without reference to either evidence or law. Likewise, without reference to evidence and law is his recital pertaining to "Plaintiff's First Lawsuit" (at pp. 6-9) and "This "Lawsuit" (at pp. 9-13) – which are the second two headings of his "Statement of the Case" – the first two "The Judicial Pay Crisis" (at pp. 2-3) and "The Two Compensation Commissions" (at pp. 3-6) belonging, if at all, in his "Argument" pertaining to appellants' sixth, seventh, and eighth causes of action – with comparable discussion of constitutional, statutory, and rule provisions pertaining to the budget, etc. placed in the seven other causes of action to which they would be germane.

CONCLUSION

Respondents – represented by the state attorney general – have NO legitimate defense to this appeal and by their litigation fraud have reinforced appellants' entitlement to adjudication of each of their "Questions Presented" in their favor, *as a matter of law.*

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

Dated: White Plains, New York
October 4, 2018

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