

**Appellate Division Docket #CV-23-0115**

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

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

Albany Co. Index #: 904235-22  
AD Docket #: CV-23-0115

Appellants,

-against-

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

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

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

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

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

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

Respondents.

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**RECORD ON APPEAL**  
**Volume III [R.597-R.911]**

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ELENA RUTH SASSOWER, unrepresented 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

10 Stewart Place, Apartment 2D-E  
White Plains, New York 10603  
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Stipulation in Lieu of Certification Pursuant to CPLR §5532

## **APPELLANTS' STATEMENT PURSUANT TO CPLR §5531**

1. The index number of the case in the court below is 904235-22.
2. The full names of the original parties are set forth in the caption. There have been no changes, other than that on July 8, 2022, pursuant to the “ethics commission reform act of 2022”, Respondent/Defendant Joint Commission on Public Ethics (JCOPE) was shut down – replaced by the Commission on Ethics and Lobbying in Government (COELIG).
3. The action was commenced in Supreme Court, Albany County.
4. This action was commenced on June 7, 2022 by the filing of a Verified Petition/Complaint, an RJI, and an Order to Show Cause for mandamus, declaratory relief, and a preliminary injunction to stay the “ethics commission reform act of 2022” from taking effect on July 8, 2022 and to enjoin JCOPE from closing on that date.

On June 23, 2022, all Respondents/Defendants were personally served with the Verified Petition/Complaint and a Notice of Petition, whose requested relief – based on what had occurred in connection with Petitioners/Plaintiffs’ OSC for a preliminary injunction and TRO – now included transfer/removal to federal court or certification of the question and directing Respondent/Defendant Attorney General Letitia James to identify:

- “i. that a determination has been made, pursuant to Executive Law §63.1 as to the ‘interest of the state’ herein; and
- ii. that a determination has been made that she can ethically, lawfully, and constitutionally represent her fellow respondents/defendants herein, where she is a party with direct financial and other interests, as in the March 5, 2021 complaint filed with JCOPE against her (Exhibit D to the verified petition/complaint)”.

On September 1, 2023, by a Verified Amendment to their Verified Petition/Complaint, served *via* NYSCEF, Petitioners/Plaintiffs supplemented their first and fifth causes of action to include the certiorari provided for by Article 78.

5. This is a hybrid Article 78 proceeding, CPLR §3001 declaratory judgment action, and State Finance Law Article 7-A citizen-taxpayer action against public officers and bodies who have violated mandatory statutory, constitutional, and rule provisions to corrupt New York state governance, misappropriate vast amounts of taxpayer monies, and insulate themselves from ethics complaints. In addition to the mandamus, certiorari, and other declarations the Verified Petition/Complaint seeks with respect to its ten causes of action, it additionally seeks an order:

“referring respondents to the Public Integrity Section of the U.S. Department of Justice’s Criminal Division for investigation and prosecution of their public corruption, obliterating constitutional, lawful governance and stealing taxpayer monies, documentarily-established by petitioners’ interrelated complaints to the New York State Joint Commission on Public Ethics, to the Legislative Ethics Commission, to the New York State Inspector General, to the New York State Commission on Judicial Conduct, to the Appellate Division attorney grievance committees, and to the Unified Court System’s Inspector General, among other ethics oversight and enforcement entities”.

6. These are two appeals: (1) from a November 23, 2022 “Decision, Order and Judgment” of Ulster County Supreme Court Justice David Gandin, entered on that date, which contains NO judgment; and (2) from Justice Gandin’s February 15, 2023 Decision and Order, entered on February 16, 2023.
7. These appeals are being perfected on a full, reproduced record.

AG's August 16, 2022 Letter Request, Granted by Justice Gandin [R.597]

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERALLETITIA JAMES  
ATTORNEY GENERALDIVISION OF STATE COUNSEL  
LITIGATION BUREAU

August 16, 2022 8/16/22: Request granted. Respondents' submission shall be capped at 8,000 words

Hon. David Gandin  
Supreme Court Justice  
Ulster County Courthouse  
285 Wall Street  
Kingston, NY 12401Re: *Center for Judicial Accountability, Inc. et al. v. New York State Commission on Public Ethics, et al.*; 904235-22 (Sup. Ct. Albany Cty.)

Dear Judge Gandin:

I write at this time on behalf of Respondents to request permission to file a memorandum of law in response to Petitioners' application for a preliminary injunction and also in support of a cross-motion to dismiss, to contain no more than 8,000 words, in light of the number of claims raised in the Petition/Complaint and the number of Respondents/Defendants.

In this hybrid Article 78 proceeding and declaratory judgment action, the Petition/Complaint consists of 54 pages and raises multiple causes of action, including claims brought under Article 78 for mandamus relief and claims seeking declaratory injunctive relief. A brief of less than 7,000 words would not adequately address each of the issues raised in the petition/complaint and the preliminary injunction application. A longer brief would put the Court in a better position to resolve the issues before it.

Thank you for your attention to this matter.

Respectfully,

By: /s/ Gregory J. Rodriguez

Gregory J. Rodriguez

Assistant Attorney General

(518) 776-2612

Gregory.Rodriguez@ag.ny.gov

cc: Elana Ruth Sassower (via NYECF)

AG's August 18, 2022 Notice of Cross-Motion to Dismiss Verified Petition [R.598-599]**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY**

---

In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

Petitioners-Plaintiffs,

**NOTICE OF CROSS-  
MOTION**

-against-

Index No. 904235-22

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, et al.,

Respondents-Defendants.

---

PLEASE TAKE NOTICE that upon the annexed Affidavit of Emily Logue, Affidavit of Leslie M. Arp, and the accompanying memorandum of law, Respondents-Defendants New York State Joint Commission on Public Ethics, Legislative Ethics Commission, New York State Inspector General, Kathy Hochul, in her official capacity as Governor of the State of New York; Andrea Stewart-Cousins, in her official capacity as Temporary President of the NYS Senate, and the New York State Senate, Carl Heastie, in his official capacity as Assembly Speaker, and the New York State Assembly, Letitia James, in her official capacity as Attorney General of the State of New York, Thomas DiNapoli, in his official capacity as Comptroller of the State of New York will move at a Term of the Supreme Court, held in and for the County of Albany, at the Albany County Court House, Albany, New York on September 22, 2022 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR 3211(a)(1), 3211(a)(3), 3211(a)(7) CPLR 7804(f) and granting dismissal of the Verified Petition/Complaint, and alternatively, in the event

AG's August 18, 2022 Notice of Cross-Motion to Dismiss Verified Petition [R.598-599]

that the motion is denied, for leave to serve an answer, within thirty days, and for such other relief as may be just and proper.

Pursuant to CPLR § 2214(b), responsive papers, if any, are required to be served upon the undersigned at least seven (7) days before the return date of this motion.

Dated: Albany, New York  
August 18, 2022

LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Respondents-Defendants  
The Capitol  
Albany, New York 12224

By: /s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
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Elena Ruth Sassower (*via NYSECF*)

AG's August 18, 2022 Memorandum of Law in Opposition & in Support [R.600-634]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

Petitioners/Plaintiffs,

Index No. 904235-22

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, et al.,

Respondents/Defendants.

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**RESPONDENTS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS'  
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF AND IN SUPPORT OF  
RESPONDENTS' CROSS-MOTION TO DISMISS THE PETITION/COMPLAINT**

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Respondents/Defendants New York State Joint Commission on Public Ethics (“JCOPE”); Legislative Ethics Commission (“LEC”); New York State Offices of the Inspector General; Kathy Hochul, in her official capacity as Governor of the State of New York; Andrea Stewart-Cousins, in her official capacity as Temporary Senate President; the New York State Senate; Carl Heastie, in his official capacity as Assembly Speaker; the New York State Assembly; Letitia James, in her official capacity as Attorney General of the State of New York; and Thomas DiNapoli, in his official capacity as Comptroller of the State of New York (hereafter collectively “Respondents”), by their attorney, Letitia James, Attorney General of the State of New York, respectfully submit this memorandum of law (i) in opposition to Plaintiffs/Petitioners’ (hereafter “Petitioners”) request for preliminary injunctive relief and (ii) in support of Respondents’ cross-motion to dismiss the Verified Petition/Complaint, NYECF No. 1 (hereafter “Petition”), pursuant to CPLR 3211(a)(1), 3211(a)(3) and 3211(a)(7).

**PRELIMINARY STATEMENT**

In this hybrid CPLR article 78 proceeding and declaratory judgment action, Petitioners request that this Court take the extraordinary step of declaring as unconstitutional, unlawful and void (1) Part QQ of the Education, Labor Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C - the “Ethics Commission Reform Act of 2022”; (2) the entire State Budget for fiscal year 2022-23; (3) Budget Bill S.8001-A/A.9001-A; (4) various appropriations from the 2022-23 state budget; and (5) Public Officers Law § 108.2(b). Petitioners also seek mandamus relief directing (1) JCOPE “to comply with Executive Law 94.13(a) and (b)” related to seven complaints filed by Petitioners; (2) JCOPE to issue Annual Reports for 2020 and 2021; (3) the New York State Inspector General to handle Petitioners’ complaint dated November 21, 2021; (4) the LEC



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to issue annual reports for 2020 and 2021, and (5) Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie to appoint a ninth member to the Legislative Ethics Commission.

By Amended Order to Show Cause dated July 8, 2022, Petitioners seek an order (1) granting Petitioners “a TRO pending a hearing on, and determination of, their entitlement to a preliminary injunction to stay” the Ethics Commission Reform Act of 2022 (“ECRA”); and (2) granting Petitioners “a preliminary injunction establishing their summary judgment entitlement to a declaration that . . . the ethics reform act of 2022 - was enacted in violation of mandatory provisions of the New York State constitution, statutes, legislative rules, and caselaw and must therefore be declared unconstitutional, unlawful, and void.”<sup>1</sup> NYECF No.75.

Petitioners’ request for a preliminary injunction must be denied as Petitioners cannot satisfy the demanding standard imposed upon movants seeking the extraordinary remedy of injunctive relief. First, Petitioners fail to state a claim for relief that is plausible on its face, and, therefore, fail to demonstrate that they are likely to succeed on the merits. As an enactment of the Legislature, ECRA and the resulting replacement of JCOPE with a Commission on Ethics and Lobbying in Government (“COELIG”), is presumed constitutional and petitioners cannot meet the heavy burden of establishing its unconstitutionality. Second, Plaintiffs fail to make an adequate showing of irreparable harm. Third, the balance of equities weighs in favor of Respondents and the public interest.

Further, the causes of action raised in the Petition should be dismissed because Petitioners lack standing and their claims are not justiciable, the Petition fails to state a claim under Article 78 for mandamus relief, Respondents Hochul, Stewart-Cousins and Heastie are entitled to immunity

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<sup>1</sup> Petitioners’ applications for a TRO were previously denied. NYECF Nos. 41, 75)

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from Petitioners' claims, Petitioners fail to state a claim that the state budget is unconstitutional, and Respondents James and DiNapoli are not proper respondents.

In sum, Plaintiffs' motion for a preliminary injunction must be denied, and the Petition should be dismissed in its entirety.

**ARGUMENT****POINT I****PETITIONERS' MOTION FOR A  
PRELIMINARY INJUNCTION SHOULD BE DENIED**

A preliminary injunction is a "drastic remedy" that should be issued "sparingly." *Kuttner v. Cuomo*, 147 A.D.2d 215, 218 (3d Dept. 1989). To prevail on a motion for a preliminary injunction, the moving party must establish: "(1) the likelihood of success on the merits; (2) irreparable injury absent granting the preliminary injunction; and (3) a balancing of the equities." *Id.* Each of these requirements must be satisfied by admissible evidence that is "clear and convincing." *East Riv. Fifties Alliance, Inc. v. City of New York*, 178 A.D.3d 492, 493 (1<sup>st</sup> Dept. 2020) (motion for preliminary injunction must be supported by admissible evidence); *County of Suffolk v. Givens*, 106 A.D.3d 943, 944 (2d Dept. 2013) (applying clear and convincing evidence standard). Further, "[b]efore granting a preliminary injunction the party seeking the relief must demonstrate a strong probability of ultimate success and thus a clear right to the relief sought." *Rick J. Jarvis Assocs. v Stotler*, 216 A.D.2d 649, 650 (3d Dept. 1995).

As an initial matter, Petitioners' request for a preliminary injunction is improper "because it would upset, rather than maintain, the status quo and would effectively grant the ultimate relief sought." *Moltisanti v East Riv. Hous. Corp.*, 149 A.D.3d 530, 531 (1st Dept. 2017).

For the reasons set forth below, Petitioners fail to meet their heavy burden for obtaining a preliminary injunction.

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**A. PETITIONERS FAIL TO DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS****1. ALL CLAIMS BROUGHT BY CENTER FOR JUDICIAL ACCOUNTABILITY, INC. ("CJA") MUST BE DISMISSED**

As a non-attorney, Petitioner Sassower cannot represent the interests of the corporate petitioner in this action. CPLR 321(a) prohibits the appearance of a "corporation or voluntary association" in this judicial proceeding other than by an attorney. *See* CPLR 321(a). The Petition describes Petitioner CJA as "a national non-partisan, non-profit citizens' organization...incorporated in 1994 under the laws of the State of New York." NYECF No. 1, ¶ 4. Petitioners bring this action *pro se* and, upon information and belief, Petitioner Sassower is not an attorney admitted to practice law in the State of New York. *Center for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1409 (3d Dept. 2018). Therefore, pursuant to CPLR 321(a), any claims alleged in the Petition on behalf of Petitioner CJA must be dismissed. *Id. See also Naroor v. Gondal*, 5 N.Y.3d 757, 757 (2005); *Barretta Realty Skyline v. Principal Land Abstract, LLC*, 38 Misc. 3d 146(A) (2d Dept. 2013).

**2. PETITIONERS LACK STANDING**

Standing is a threshold legal requirement for a party seeking to challenge a governmental action, imposing upon the complaining party an obligation to demonstrate that he or she has suffered an injury in fact that is both distinct from that of the general public and "fall[s] within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agency has acted." *Davis v. N.Y. State Dep't of Educ.*, 96 A.D.3d 1261, 1262 (3d Dept. 2012)(citation omitted); *see Matter of Diederich v St. Lawrence*, 78 A.D.3d 1290, 1291 (2010), *lv dismissed and denied* 17 N.Y.3d 782 (2011); *Matter of Humane Socy. of U.S., Inc. v Brennan*, 63 A.D.3d 1419, 1420 (2009).

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Article 78 standing has traditionally been limited to persons whose interests are directly affected by the action of the body whose action is being challenged. *Black Inst. v. De Blasio*, 2022 NY Slip Op 30521(U), (Sup. Ct. New York Cty. 2022).

In their first cause of action, Petitioners allege that they sent complaints to JCOPE concerning various alleged violations of Public Officers Law (“POL”) § 74 by various state officials. NYECF No. 1, pp. 16-21. They further allege that, pursuant to Executive Law § 94, JCOPE was automatically required to send “15-day letters” to the subjects of their complaints. *Id.* Petitioners seek a mandamus to compel JCOPE to issue those letters. *Id.*

In *Sassower v. Comm'n on Judicial Conduct of N.Y.*, 289 A.D.2d 119 (1st Dept. 2001), Petitioner Sassower brought an Article 78 proceeding seeking to compel the Commission on Judicial Conduct to investigate her complaint of judicial misconduct. *Id.* at 119. The First Department held that “inasmuch as petitioner has failed to demonstrate that she personally suffered some actual or threatened injury as a result of the putatively illegal conduct, she lacks standing to sue the Commission.” *Id.* Similarly here, Petitioners cannot show that they suffered actual injury as a result of JCOPE’s alleged wrongful conduct. *See Matter of Thomas v. N.Y.C. Dep’t of Educ.*, 137 A.D.3d 642, 643 (1st Dept. 2016). Moreover, Petitioners do not “fall within the zone of interests . . . sought to be promoted or protected” by Executive Law § 94.13(a). *See id.* The former version of Executive Law § 94.13(a), in place during JCOPE’s tenure, was designed to protect the subject of a complaint filed with JCOPE so that he/she has notice of the alleged violations and is able to prepare a defense against the alleged violations. *See* Affidavit of Emily Logue (“Logue Affd.”), ¶¶ 7,8. Therefore, Petitioners’ first cause of action should be dismissed pursuant to CPLR 3211(a)(3) for lack of standing.

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Similarly, Petitioners lack standing to assert a claim for mandamus in the second, third, fourth and fifth causes of action as they fail to demonstrate that they suffered some actual or threatened injury from the misconduct alleged in those claims. Petitioners also do not “fall within the zone of interests sought to be promoted or protected” by: Executive Law § 94.9(1)(i) (Annual Reports by JCOPE [second cause of action]); Legislative Law § 80.1 and § 80.4 (concerning the functions, powers and duties of the Legislative Ethics Commission [third cause of action]); Legislative Law § 80.7(1) (annual reports of Legislative Ethics Commission [fourth cause of action]); and Executive Law Article 4-A and § 53 (duties of Inspector General [fifth cause of action]).

Petitioners also fail to establish taxpayer standing. Article 7-A of New York Finance Law provides standing to citizen taxpayers against an officer of the state who “has caused, is now causing, or is about to cause a wrongful expenditure, misappropriation, misapplication or any other illegal or unconstitutional disbursement of state funds.” N.Y. State Fin. L. § 123-b (McKinney 2009) (emphasis supplied). “Standing pursuant to State Finance Law § 123-b is narrowly construed . . . .” *Kennedy v. Novello*, 299 A.D.2d 605, 607 (3d Dept. 2002), *appeal denied*, 99 N.Y.2d 507 (2003) (citing *Rudder v. Pataki*, 93 N.Y.2d 273, 281 (1999)); *accord*, *Humane Society of the United States v. Empire Devt. Corp.*, 53 A.D.3d 1013, 1016 (3d Dept. 2008). The narrow construction is predicated on the potential danger of “interpos[ing] litigating plaintiffs and the courts into the management and operation of public enterprises.” *Matter of Transactive Corp.*, 92 N.Y.2d at 589.

A plaintiff relying upon status as a citizen-taxpayer under State Finance Law §123-b does not have to demonstrate an injury-in-fact to acquire standing in an appropriate action for declaratory and equitable relief. *See, e.g., Saratoga County Chamber of Commerce v Pataki*, 100 N.Y.2d 801,

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813 (2003). However, one may not assert taxpayer standing to challenge nonfiscal activities of state actors using the pretext of an expenditure of money to challenge governmental decision making. *Id.*

Petitioners' State Finance Law § 123-b claim fails because they challenge broad policy decisions by the Legislature rather than a specific unlawful expenditure. In the sixth, seventh, eighth, ninth and tenth causes of action of the Petition, Petitioners challenge the entire FY 2022-23 state budget and separate budget bills by repeatedly alleging conclusory claims of "fraud and larceny" and that the budget was enacted in "flagrant violation of mandatory safeguarding provisions of the New York State Constitution." However, their claims fail to demonstrate a "wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property" within the ambit of State Finance Law § 123-b(1).

A person's "deep concern" about an issue, without more, does not give such person standing to sue. *Board of Ed. of Mamaroneck U.F.S.D. v. Attorney General*, 25 A.D.3d 637, 638 (2d Dept. 2006). Rather, standing requires the plaintiff to allege not only that *she* has an injury in fact that is distinct from any injury of the general public, but also, that *she* is within the zone of interests protected by the statute or constitutional provision at issue. *See Roulan v. County of Onondaga*, 21 N.Y.3d 902, 905 (2013); *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 773-774 (1991); *Lancaster Dev., Inc. v. McDonald*, 112 A.D.3d 1260, 1261 (3d Dept. 2013), *lv. denied*, 22 N.Y.3d 866 (2014). And the injury-in-fact may not be speculative or conjectural. *Matter of Clean Water Advocates of N.Y., Inc. v. New York State Dept. of Environmental Conservation*, 103 A.D.3d 1006, 1008 (3d Dept. 2013), *lv. denied*, 21 N.Y.3d 862 (2013).

Petitioners lack standing to bring any claims relating to the Legislature's alleged violations of its own rules and procedures because they cannot allege an injury "distinct from that suffered

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by the public at large." *Urban Justice Center v. Silver*, 66 A.D.3d 567, 567 (1<sup>st</sup> Dept. 2009). Petitioners also lack standing to compel the Temporary Senate President and Assembly Speaker to appoint a ninth member to the legislative ethics commission since they fail to demonstrate that they personally suffered some actual or threatened injury as a result of the putatively illegal conduct. Therefore, the Third Cause of Action should be dismissed.

Petitioners lack standing and the complaint should be dismissed pursuant to CPLR 3211(a)(3).

### 3. PETITIONERS ARE NOT ENTITLED TO MANDAMUS RELIEF

Petitioners seek mandamus relief under CPLR Article 78 in the first five causes of action of the Petition. Specifically, Petitioners seek an order from this Court (1) directing JCOPE to issue "15-day letters" to each individual and/or entity that are the subject of seven complaints Petitioners allegedly made to JCOPE; (2) directing JCOPE to issue an annual report for 2021 and 2022 in compliance with Executive Law § 94.9(l)(i); (3) directing Respondents Stewart-Cousins and Heastie to comply with Legislative Law § 80.1 and § 80.4 by appointing a ninth member to the Legislative Ethics Commission "LEC"; (4) directing the LEC to issue annual reports for 2020 and 2021; and (5) directing the New York State Inspector General to "comply with Executive Law Article 4-A and its own policy and procedures" and "handle" Petitioners' November 2, 2021 complaint. Petitioners are not entitled to a writ of mandamus under CPLR § 7803(1) to compel Respondents to take specific actions.

"Mandamus to compel is available 'only to enforce a clear legal right where the public official has failed to perform a duty enjoined by law.'" *Matter of Schmitt v. Skovira*, 53 A.D.3d 918, 920 (3d Dept. 2008) (citations omitted). Further, "[t]he act sought to be compelled must be ministerial, nondiscretionary and nonjudgmental, and [must] be premised upon specific statutory

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authority mandating performance in a specific manner.” *N.Y. Civil Liberties Union v. State*, 3 A.D.3d 811, 814 (3d Dept. 2004) (citations omitted). Thus, ““while a mandamus is an appropriate remedy to enforce the performance of a ministerial duty, . . . it will not be awarded to compel an act in respect to which the officer may exercise judgment or discretion.”” *Matter of Albany Police Officers Union, Local 2841, Law Enf’t Officers Union Dist. Council 82, AFSCME, AFL-CIO v. N.Y. Pub. Emp’t Relations Bd.*, 170 A.D.3d 1312, 1313-14 (3d Dept. 2019) (citation omitted).

**a. First Cause of Action**

Pursuant to ECRA, JCOPE was replaced by the new Commission on Ethics and Lobbying in Government. Logue Affd., ¶ 4. ECRA became effective on July 8, 2022. *Id.* Since JCOPE was replaced and no longer exists, there is no officer or body to compel to act. Therefore, any claims seeking to compel JCOPE to perform an act have been mooted by the intervening developments following the filing of the Petition. “Courts are forbidden ‘to pass on academic, hypothetical, moot, or otherwise abstract questions.’” 79 *W. Main v. Cuomo*, 2021 NY. Misc. LEXIS 9603 (Sup. Ct. Suffolk Cty., May 6, 2021). Therefore, Petitioners’ first cause of action should be dismissed.

However, assuming arguendo, that the Court may issue an order directing JCOPE to act, Petitioners still fail to identify a “clear legal right” with respect to any of their claims for mandamus relief. Additionally, their request for mandamus relief is barred by the applicable four-month statute of limitations of Article 78 and/or the doctrine of laches.

*i. Petitioners Do Not Have a Clear Legal Right to Relief*

Under the version of Executive Law § 94 in place during JCOPE’s tenure, if JCOPE received a sworn complaint properly alleging a violation of the laws within its jurisdiction by an individual subject to its jurisdiction, it was required, antecedent to pursuing an investigation, to notify the individual of those allegations and afford him or her the due process opportunity to



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submit, within fifteen days, a written response setting forth information “relating to” the alleged violations. (the “15-day letter” and “15-day letter response”). *See* former Exec. Law § 94(13)(a), L 2011, ch 399, §6 (Public Integrity Reform Act of 2011 “PIRA”). Logue Affd., ¶ 7.

However, before a 15-day letter could be issued, JCOPE needed to determine (1) if the complaint alleged misconduct by an individual subject to JCOPE’s jurisdiction, and (2) whether the conduct alleged, if proved, would be violative of a law within JCOPE’s jurisdiction. Logue Affd., ¶ 14. In instances when the latter criterion was lacking, JCOPE could not be obliged to initiate a case and send a 15-day letter. Nonetheless, in such instances, JCOPE’s practice was to (1) present such complaints to a full meeting of the JCOPE Commissioners for their consideration within 60 days and (2) review the facts presented in the complaints before closing them.<sup>2</sup> *Id.*, ¶ 18. JCOPE, the agency charged with administering former Exec. Law § 94(13)(a), determined this procedural methodology to be not only a reasonable interpretation of the statute, but also consistent with PIRA’s legislative intent and with other provisions of the statute and other applicable law. *Id.*, ¶ 19. JCOPE also determined that such a process was necessary to prevent baseless, harassing, and abusive misuse of the investigative and enforcement process, and onerous, senseless demands on the resources of the agency itself and of multiple other state entities. *Id.*, ¶ 19. Such reasonable interpretation of PIRA is entitled to deference by the court. *Matter of Xerox Corp. v. N.Y. State Tax Appeals Tribunal*, 110 A.D.3d 1262, (3d Dept. 2013) (“an agency’s interpretation of the statutes it administers must be upheld absent demonstrated irrationality or unreasonableness”); *Matter of Entergy Nuclear Indian Point 2, LLC v New York State Dept. of State*, 130 A.D.3d 1190,

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<sup>2</sup> In fact, JCOPE followed this practice in connection with Petitioners’ last five complaints from August 31, 2020 – April 13, 2022. Logue affd., at ¶ 18.

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1192 (3d Dept 2015) ("[T]he determination of an agency acting pursuant to its authority and within its area of expertise is . . . entitled to judicial deference").

Petitioners seek mandamus to compel JCOPE to send 15-day letters to every individual who was the subject of seven prior complaints they made to JCOPE on June 27, 2013, December 11, 2014, August 31, 2020, March 5, 2021, November 24, 2021, December 17, 2021 and April 13, 2022. NYECF No. 1 pp. 16-21. Petitioners contend that the conduct alleged in these complaints, constitute violations of POL § 74. Logue Affd., ¶ 13. Specifically, Petitioners base their claim on former Executive Law § 94.13(a), which states that if the commission receives a sworn complaint alleging a violation of POL §§ 73, 74, etc., “. . . the commission **shall** notify the individual in writing . . .” NYECF No. , p. 16 (emphasis added).

Petitioners’ reliance on this language does not support the relief sought. “[T]he fact that a statute is framed in mandatory words such as 'shall' or 'must,' is of slight, if any, importance on the question whether the act is mandatory or directory.” *See Matter of 989 Hempstead Turnpike LLC v. Town Bd. Of the Town of Hempstead*, 2020 N.Y.Misc LEXIS 2809 (Nassau Cty. June 9, 2020)(citations omitted). Instead, “[w]hether a given provision in a statute is mandatory or directory is to be determined primarily from the legislative intent gathered from the entire act and the surrounding circumstances, keeping in mind the public policy to be promoted and the results that would follow one or the other conclusion.” *See Matter of Doe v. N.Y. State Joint Comm’n of Pub. Ethics*, 62 Misc.3d 710, 719 (Sup., Ct. Albany Co. 2018) (although Executive Law § 94 (13)(a) “contains the word ‘shall’ in connection with the time frame in which the Commission must vote, the statute contains no specific consequence which flows from the agency's failure to vote in that time frame. Therefore, the time limits outlined in these governing provisions are directory, not mandatory”).

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Based on the statutory language and JCOPE's interpretation thereof, Petitioners do not have a clear legal right to demand that 15-day letters be issued to the numerous individuals named in their complaints – including in some instances over 200 unnamed members of the New York State Legislature, all members of multiple legislative committees, all members of the Commission on Judicial Conduct, and all statewide elected officials – complaints that allege only broad, nonspecific, conclusory, aggregate assertions against multiple public officials without alleging how each individually purportedly engaged in actions that amount to a personal conflict of interest proscribed under POL § 74. Logue Affd., ¶ 15. On the contrary, information tending to establish a violation of the POL, by specific individuals subject to the POL, is entirely absent from Petitioners' complaints to JCOPE. *Id.*

In such circumstances, neither Executive Law § 94.13(a) nor JCOPE policy interpreting and applying that provision required the issuance of 15-day letters. *Id.*, ¶ 16. No 15-day letter could properly be formulated based upon Petitioners' complaints, and, therefore, none was issued.<sup>3</sup> *Id.*, ¶ 17. Petitioners' arguments to the contrary would require JCOPE to routinely notify each individual that is named in a complaint made to JCOPE by any member of the public merely claiming, in conclusory words, a violation of the Public Officers Law without anything more. That interpretation would lead to absurd results.

ii. *Petitioners' Claims About the 15-Day Letters Are Untimely*

Petitioners delayed their challenge to JCOPE's alleged non-response to their complaints dated June 27, 2013, December 11, 2014, August 31, 2020 and March 5, 2021, the most recent of

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<sup>3</sup> Petitioner Sassower acknowledges that she was informed that the Commission voted to close petitioners' complaints dated November 24, 2021, December 17, 2021 and April 13, 2022. NYECF No. 1, ¶¶ 38(a), 39(c), 40(a). Therefore, compelling letters to be sent to every individual complained about in these complaints would be a fruitless endeavor since JCOPE closed those matters pursuant to its practice.

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which was made fifteen months before the instant Petition was filed. Therefore, these claims are barred by the statute of limitations and the doctrine of laches.

In order to commence a timely proceeding pursuant to CPLR Article 78, a petitioner must seek review of a determination within four months after the determination to be reviewed becomes final and binding upon the petitioner, or after the respondents' refusal, upon the demand of the petitioner, to perform its duty. *Matter of Barresi v. Cty. of Suffolk*, 72 A.D.3d 1076, 1076-77 (2d Dept. 2010) (citations omitted); *see also Matter of Chevron U.S.A. Inc. v. Comm'r of Env'tl. Conservation*, 86 A.D.3d 838, 840-41 (3d Dept. 2011). However, the four-month statute of limitations for review of such an administrative determination cannot be frustrated by delaying the demand so as to toll the statute. *Thomas v. Stone*, 284 A.D.2d 627, 628 (3d Dept. 2001). "The petitioner must make his or her demand within a reasonable time after the right to make it occurs, or after the petitioner knows or should know of the facts which give him or her a clear right to relief, or else, the petitioner's claim can be barred by the doctrine of laches." *Matter of Chevron U.S.A. Inc. v. Comm'r of Env'tl. Conservation*, 86 A.D.3d 838, 840-41, (3rd Dept. 2011).

Petitioners failed to make a timely demand. Therefore, Petitioners' request for a mandamus to compel JCOPE to issue letters to the subjects of their complaints dated June 27, 2013, December 11, 2014, August 31, 2020 and March 5, 2021 should be dismissed.

**b. Second and Fourth Causes of Action**

*i. Petitioners' Second Cause of Action is Moot*

In their second cause of action, Petitioners seek to compel JCOPE to issue Annual Reports for 2021 and 2022. As of July 8, 2022, JCOPE no longer exists and any relief sought has been mooted. Moreover, JCOPE issued an annual report for the year 2021, which was published on July 7, 2022 and includes a listing by assigned number of each complaint received in 2021 and its

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status as of December 31, 2021. Logue Aff., ¶ 24. Since JCOPE ceased to exist as of July 8, 2022, it could not have issued an “annual” report for 2022.

*ii. Petitioners’ Fourth Cause of Action is Moot*

In their fourth cause of action, Petitioners seek a mandamus to compel the Legislative Ethics Commission (“LEC”) to issue Annual Reports for 2020 and 2021. The annual reports have been issued as reflected on the LEC’s website. See <https://legethics.ny.gov/public-documents>. Therefore, this claim is moot.

**c. Fifth Cause of Action**

In their fifth cause of action, Petitioners seek to direct the New York State Offices of the Inspector General (“OIG”) to “comply with the mandates of Executive Law Article 4-A and its own Policy and Procedure Manual,” in connection with Petitioners’ November 21, 2021 Complaint. NYECF. No. 1, p. 25. As stated above, mandamus relief is appropriate to enforce the performance of a ministerial duty, but it is not available to compel the performance of an act in respect to which the officer may exercise judgment or discretion. See *Matter of Albany Police Officers Union, Local 2841, Law Enf’t Officers Union Dist. Council 82, AFSCME, AFL-CIO v. N.Y. Pub. Emp’t Relations Bd.*, 170 A.D.3d 1312, 1313-14 (3d Dept. 2019) (citation omitted). Article 4-A, which is OIG’s enabling statute, directs the OIG to “receive and investigate complaints from any source, or upon [its] own initiative, concerning allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in any covered agency.” N.Y. Exec. Law Article 4-A, §53(1).

OIG’s policy for managing complaints is detailed in OIG’s Case Management Policy: 0101. Arp Affd., ¶ 5, Exhibit A. Complaints received by OIG are entered into a case tracking system and are managed in one of two ways. *Id.*, ¶ 4. Certain complaints are logged by the Case

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Management Unit (“CMU”) of OIG and then reviewed and evaluated by OIG executive staff. *Id.* These types of complaints are often time sensitive, related to litigation, may involve a pending Freedom of Information Law request, or may involve highly confidential subject matters. *Id.* All other complaints not falling into these categories are logged by CMU and added to a docket, which is reviewed and discussed at weekly meetings by OIG managers called the Case Review Panel (“CRP”). *Id.*

New York Executive Law Article 4-A law does not expressly require OIG to investigate all complaints submitted to it. Instead, OIG is afforded the discretion to evaluate each complaint to determine its credibility. *Id.*, ¶ 11. OIG Case Management Policy 0101 details the process for such complaint review. *Id.*, at Exhibit A. See *Matter of Xerox Corp. v. N.Y. State Tax Appeals Tribunal*, 110 A.D.3d 1262, (3d Dept. 2013) (“an agency's interpretation of the statutes it administers must be upheld absent demonstrated irrationality or unreasonableness”).

Upon receipt of Petitioners’ November 2, 2021 letter, the CRP determined that it was difficult to decipher in that it did not provide any basis to support its conclusory allegations and overall offered inaccurate statements. *Id.*, ¶ 7. Therefore, consistent with Article 4-A and OIG policies, the CRP determined that no action would be taken. *Id.* As a matter of course, when a matter is not referred for action by OIG (“no action” or “N/A” matter), no additional follow up or communication with the complainant occurs. In accordance with this longstanding practice, CMU staff did not inform Petitioner Sassower of the status of her November 3, 2021 letter, nor was it legally obligated to do so. *Id.* ¶ 8.

Given the foregoing, Petitioners’ request for mandamus relief should be dismissed.

4. TO THE EXTENT THAT PETITIONERS SEEK A WRIT OF PROHIBITION, SUCH RELIEF IS NOT AVAILABLE

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Petitioners seek to prohibit the implementation of statutes abolishing JCOPE and creating COELIG. NYECF 1, at pp. 32-25. Insofar as Petitioners seek a writ of prohibition under CPLR § 7803(2) to do so, such relief is not available.

A writ of prohibition pursuant to CPLR § 7803(2) is available only where there is a clear legal right to the relief requested. *See Matter of N.Y. State Health Facilities Ass'n, Inc. v. Sheehan*, 100 A.D.3d 1086, 1087 (3d Dept. 2012). Further, a writ of prohibition may be obtained only when that right “is threatened by a body or officer acting in a judicial or quasi-judicial capacity without jurisdiction in a matter over which it has no power over the subject matter or where it exceeds its authorized powers in a proceeding over which it has jurisdiction.” *Morgenthau v. Erlbaum*, 59 N.Y.2d 143, 147 (1983) (citations and internal quotation marks omitted). A writ of prohibition may not issue against legislative, executive or ministerial action. *See Matter of Suffolk Cty. Ethics Comm'n v. Lindsay*, 30 Misc.3d 1214(A) (Sup. Ct. Suffolk Cty. 2011) (citing, *Matter of Schumer v Holtzman*, 60 N.Y.2d 46, 51 (1983)).

First, Petitioners do not have a “clear legal right” to the relief requested; to the contrary, the ERCA is now an enacted statute and petitioners challenge to its constitutionality is baseless. *See* Point A(4) below. Second, the Petition does not contain any allegations that the challenged actions were judicial or quasi-judicial in nature. Rather, COELIG was created by legislative action with the enactment of the ERCA.

Given the foregoing, the “extraordinary remedy” of prohibition does not lie.

5. GOVERNOR HOCHUL, SENATE TEMPORARY PRESIDENT STEWART-COUSINS AND ASSEMBLY SPEAKER HEASTIE ARE ENTITLED TO IMMUNITY FROM PETITIONERS' CLAIMS

The Speech or Debate Clause of the New York State Constitution, article III, § 11, provides: "For any speech or debate in either house of the legislature, the members shall not be

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questioned in any other place." The clause has been interpreted to afford a legislator immunity from any proceeding challenging lawful action taken in his or her official capacity. *Rivera v. Espada*, 98 N.Y.2d 422 (2002) (*Per curiam*). The Speech or Debate Clause of the New York State Constitution shields legislators and the Governor not only from the consequences of litigation, but also protects them from the burden of defending themselves in court as long as their actions fall within the "sphere of legitimate legislative activity." *Matter of Maron v. Silver*, 2007 N.Y. Misc. LEXIS 8086 (Sup. Ct. Albany Co. 2007) (McNamara, J.), *aff'd in part and modified in part on other grnds*, 14 N.Y.3d 230 (2010).

The Clause is designed not for the private or personal benefit of the members, but to ensure the integrity of the process by ensuring the independence of the legislators themselves. *United States v. Brewster*, 408 U.S. 501, 507 (1972); *People v. Ohrenstein*, 77 N.Y.2d 38, 54 (1991). The fundamental purpose of the clause is to ensure that the legislative function may be performed independently. *Matter of Straniere v. Silver*, 218 A.D.2d 80, 83 (3d Dept. 1996), *aff'd*, 89 N.Y.2d 825 (1996). The legislative process is protected not only shielding legislators from the consequences of litigation, but also from the burden of defending themselves in court. *Id.* Once it is determined that the subject matter of the suit is legislative activity, the privilege of immunity from suit applies, even where the legislative activity is alleged to be unconstitutional. *Id.*

The Clause has also been held to apply to all legislative activity, and to protect members of the State Legislature, and to protect members of the executive branch. *Matter of Town of Verona (Oneida Cty.) v. Cuomo*, 44 Misc.3d 1225(A) (Sup. Ct. Albany Co. 2014). Petitioners fail to state a cause of action demonstrating any wrongful conduct on the part of the Governor. *See generally, NYECF No. 1.* The Governor is entitled to immunity in any event, because the underlying dispute deals with her role in adopting legislation.



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With respect to the allegations in the Petition, Governor Hochul, Temporary President Stewart-Cousins, and Speaker Heastie, were acting within the realm of legitimate legislative activity concerning any actions they took related to the passage of the FY 2022-23 budget and the budget bills at issue. In sum, the Governor and State legislators are not proper defendants here and Petitioners fail to establish the claims against them have any merit.

6. PETITIONERS' CLAIMS RELATING TO BUDGET NEGOTIATIONS BETWEEN THE GOVERNOR AND THE LEGISLATURE SHOULD BE DISMISSED

As in this case, in *Ctr. for Judicial Accountability, Inc. v. Cuomo*, Petitioner Sassower challenged the “three people in a room” budget negotiations. The Third Department affirmed the dismissal of a challenge to the constitutionality of “three-men-in-a-room” budget negotiations between the Governor and the Legislature, because budget negotiations between the Governor and the leaders of the Senate and Assembly are not prohibited. Indeed, the Court of Appeals has observed that state budgets are often a “product of such *negotiations, often extremely protracted ones.*” *Ctr. for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1412-13, (3d Dept. 2018) (citing *Pataki v New York State Assembly*, 4 N.Y.3d 75, 85, (2004)) (emphasis added).

Thus, Petitioners’ claim that the FY 2022-23 budget and budget bills S.8001-A/A.9001-A and S.8006-C/A.9006-C are unconstitutional because of “three people in a room” budget negotiations should be dismissed.

7. TO THE EXTENT PETITIONERS CHALLENGE LEGISLATIVE RULES, SUCH CLAIMS SHOULD BE DISMISSED

In addition to challenging the budget based on “three people in a room” negotiations, it appears that Petitioners also allege that the Senate and Assembly acted in violation of their own rules in considering the 2022-23 state budget. NYECF No. 1, at sixth, seventh, eighth, and ninth causes of action. However, such claims are not actionable, as such procedural matters are “wholly

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internal” to the Legislature and thus beyond judicial review under the separation of powers. *Heimbach v. State*, 59 N.Y.2d 891, 893 (1983), *app. dismissed*, 464 U.S. 956 (1983) (determining whether a legislative roll call was incorrectly registered is a legislative matter beyond judicial review); *Urban Justice Ctr. v. Pataki*, 38 A.D.3d 20, 27 (1st Dept. 2006) (holding it is not the province of the courts to direct the Legislature on how to do its work, particularly where the internal practices of the Legislature are involved).

The independence of the legislature and judiciary compels that each must be “confined to its own functions and can neither encroach upon nor be made subordinate to” each other. *Matter of Davies*, 168 N.Y. 89, 102 (1901); *Urban Justice Ctr.*, 38 A.D.3d at 27. To this end, the branches must “be free from interference, in the discharge of its own functions and particular duties, by either of the others.” *Matter of Gottlieb v. Duryea*, 38 A.D.2d 634, 635 (3d Dept. 1971), *aff’d.*, 30 N.Y.2d 807 (1972), *cert. denied*, 409 U.S. 1008 (1972); *see People ex rel. Burby v. Howland*, 155 N.Y. 270, 282 (1898). Simply put, “[it] is not the province of the courts to direct the legislature how to do its work.” *Heimbach*, 59 N.Y.2d at 893 (quoting *N.Y. Public Interest Research Group v. Steingut*, 40 N.Y.2d 250, 257 (1976)). *See also People ex rel. Hatch v. Reardon*, 184 N.Y. 431 (1906). Any other result would foist this Court into an “improvident intrusion into the internal workings of a coequal branch of government.” *Smith v. Espada*, Index No. 4912-09 (Sup. Ct., Albany Cty, June 16, 2009).

8. PETITIONERS’ CONSTITUTIONAL CHALLENGES TO THE FY 2022-23 STATE BUDGET, BUDGET BILLS AND PUBLIC OFFICERS LAW § 108.2(B) SHOULD BE DISMISSED

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The sixth, seventh, eighth and ninth Causes of Action, relate to Petitioners' ongoing pursuit, both recently and years ago, to convince the State government that it has enacted State budgets that are allegedly in violation of the New York State Constitution. In fact, almost all of the exhibits identified in the complaint are letters written, transcripts of oral testimony, or FOIL requests made by Petitioners themselves. In this action, Petitioners challenge, in part, the constitutionality of the entire FY 2022-23 State Budget, as well as budget bills S.8006-C/A.9006-C and S.8001-A/A.9001. Throughout the Petition, Petitioners continually use inflammatory language such as "larceny", "fraudulent", and "flagrant violation" in an effort to somehow support their claims, but these conclusory and inflammatory allegations do not state a claim.

The FY 2022-23 State Budget, and budget bills S.8006-C/A.9006-C and S.8001-A/A.9001, have now been enacted. Accordingly, Petitioners' claims are challenges to the constitutional validity of enacted legislation. Where a litigant asserts that a statute is unconstitutional, courts are mindful that enactments of the Legislature – a coequal branch of government – may not casually be set aside by the Judiciary. *Elpa Bldrs. v. N.Y.*, 196 A.D.3d 541 (1<sup>st</sup> Dept. 2021) (citation omitted). The statutes in issue enjoy a strong presumption of constitutionality, grounded in part on "an awareness of the respect due the legislative branch." *Dunlea v Anderson*, 66 N.Y.2d 265, 267 (1985). It is well settled that "[l]egislative enactments are entitled to 'a strong presumption of constitutionality'" and "courts strike them down only as a last unavoidable result" after "every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible." *White v. Cuomo*, 2022 N.Y. LEXIS 393 (2022)(citations omitted).

On the merits, a plaintiff bears the heavy burden of establishing the statute's unconstitutionality "beyond a reasonable doubt." *Id.*; *Overstock.com, Inc. v. N.Y. State Dept. of*

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*Taxation & Fin.*, 20 N.Y.3d 586, 593 (2013). Petitioners have not articulated any allegations that sufficiently state a claim that the challenged legislative enactments are unconstitutional, let alone are unconstitutional beyond a reasonable doubt.

In the sixth cause of action, Petitioners make a series of conclusory and incoherent claims that the Ethics Commission Reform Act of 2022 was “enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules and caselaw.” NYECF No. 1, ¶ 80. Petitioners assert that if JCOPE had issued 15-day letters to the individuals they complained about, JCOPE “would have known from written responses” that ECRA was unconstitutionally enacted. *Id.*, at ¶ 80. This claim is baseless and fails to state a claim that the enacted statute is unconstitutional. Petitioners further claim that ECRA was unconstitutionally enacted under “three people in a room” negotiations and/or that legislative rules were allegedly not followed. These claims fail to state a claim as set forth in Points 6 and 7 above.

Lastly, Petitioners claim that ECRA is non-fiscal policy that was improperly inserted into an appropriation bill. Petitioners claim that since it makes substantive policy, it could not constitutionally be introduced pursuant to Article VII and “it became an introduced budget bill by fraud by the Legislature”. NYECF No. 1. at ¶ 81. This is not true. As set forth in the public link of the Legislative Retrieval System (LRS), which offers access to New York State Legislation, both Article VII Language Bills and Appropriation Bills were included as part of the NYS FY 2022-23 budget. *See*, <http://public.leginfo.state.ny.us/navigate.cgi>. The Ethics Commission Reform Act of 2022 was enacted as part of the 2022-23 Education, Labor and Family Assistance Article VII Language Bill S. 8006 –C and A. 9006 –C. It was not included as part of an appropriation bill.

The state constitution specifically authorizes the governor to submit “a bill or **bills** containing all proposed appropriations and reappropriations included in the budget and **the**

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**proposed legislation**, if any, recommended therein.” NY Const art VII, §3 (emphasis added).

Thus, a language bill containing proposed legislation is appropriate under Article VII. The constitution does not limit budget legislation to appropriation bills only.

The seventh and eighth causes of action, contain similar rambling and unclear allegations that the state budget and budget bills were improperly enacted based on “three people in a room” negotiations or that legislative rules were allegedly not properly followed. These claims fail to state a claim as set forth in Points 6 and 7 above.

In the ninth cause of action Petitioners allege in wholly conclusory and incoherent terms that there was alleged “flagrant corruption in handling” Petitioners’ own prior complaints made to various legislators. These allegations do not state a claim.

In the tenth cause of action, Petitioners seek a declaration that POL § 108(2)(b) is unconstitutional, as written and as applied, as it is in violation of Article III, § 10 of the NYS Constitution. POL § 108 contains exemptions to New York’s open meetings law. Specifically, POL § 108(2)(a) expressly exempts “deliberations of political committees, conferences and caucuses.” POL § 108(2)(b) elaborates and states that the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York who are members or adherents of the same political party.

“A party mounting a facial constitutional challenge bears the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment.” *Matter of Moran Towing Corp. v. Urbach*, 99 N.Y.2d 443, 448 (2003) (internal quotes omitted). Petitioners cannot meet this significant burden. In *Urban Justice Ctr. v. Pataki*, the Court faced a challenge to closed door conferences in the state legislature. 38 A.D.3d 20 (2006). The Court pointed to a legislative declaration related to POL § 108(2)(b), which stated

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that the performance of the political party system bodies requires the private, candid exchange of ideas and points of view among members of each political party concerning the public business to come before legislative bodies. *Id.* at 22, citing L 1985,c 136, § 1. The Court held that “those legislative pronouncements reflect the notion that political parties are legitimate vehicles for governmental involvement and that the claims are not justiciable”. *Id.* In *Oneonta Star. Div. of Ottaway Newspapers, Inc. v County of Schoharhie*, 112 A.D.2d 622 (3d Dept. 1985), the Court held that closed meetings attended by Republican members of the County Board of Supervisors are not violative of the open meetings law. Petitioners’ as applied challenge also fails as there are no allegations that POL § 108 has ever been applied to them, or that it deprived them of any protected right. *Matter of Real Estate Bd. of N.Y., Inc. v City of New York*, 165 A.D.3d 1, 9, n 3 (1st Dept 2018) (An as-applied challenge requires an analysis of the facts of a particular case to determine whether the application of a statute, even one constitutional on its face, deprived the individual to whom it was applied of a protected right).

9. ATTORNEY GENERAL JAMES AND COMPTROLLER DINAPOLI ARE NOT PROPER RESPONDENTS

Although entirely unclear, in the “Parties” section of the Petition, Petitioners appears to name Attorney General James and Comptroller DiNapoli as parties because they are “subject to JCOPE’s ethics jurisdiction” and “will become an appointing authority for one of [COELIG]’s 11 members.” NYECF No. 1, ¶¶ 14, 15. Petitioners point to no specific responsibilities imposed upon the Attorney General or the Comptroller in relation to the consideration and enactment of the state budget. Other than in the “Parties” section of the Petition, they are not named anywhere else, and not alleged to have committed any wrongdoing whatsoever. Therefore, Petitioners fail to adequately state a cause of action against either of these Respondents and the Petition should be dismissed as against them. *Sobel v. Higgins*, 151 Misc.2d 876, 878 (Sup. Ct. New York Cty. 1991)

## AG's August 18, 2022 Memorandum of Law in Opposition &amp; in Support [R.600-634]

(citing *Federal National Mortgage Association*, 383 F.Supp.1294, 1296 (S.D.N.Y. 1974)) (finding the Attorney General to be an improper party because he had no specific enforcement responsibilities relating to the statute at issue); *Cheevers v. State*, 2002 Misc. LEXIS 834, \*\*6-7 (Sup. Ct. Albany Cty., July 10, 2002) (finding the Comptroller to be an improper party because the case was not challenging a disbursement by the Comptroller).

**B. PETITIONERS FAIL TO DEMONSTRATE THAT THEY WILL SUFFER IRREPARABLE HARM OR THAT THE EQUITIES BALANCE IN THEIR FAVOR**

**1. Irreparable Harm**

To establish irreparable injury to support a preliminary injunction, a movant must make a showing of irreparable and imminent injury absent the issuance of an injunction. *CGI Tech. & Solutions, Inc. v New York State Off. of Mental Health*, 2019 N.Y. Misc. LEXIS (Albany Cnty. December 31, 2019). There is no explanation of how or why Petitioners will suffer irreparable harm in the absence of the requested preliminary relief, or what such irreparable harm entails. The complete lack of allegations, much less evidence, going to irreparable harm is insufficient as a matter of law to warrant injunctive relief.

In her “July 6, 2022 Moving Affidavit” in support of a preliminary injunction, Petitioner Sassower conclusorily asserts that her affidavits previously submitted on June 6, 2022 (Dkt. No. 32), June 21, 2022 (NYECF No. 43), June 23, 2022 (NYECF No. 47) and June 28, 2022 (NYCEF No. 61) “particularized the requisite three factors” to support a preliminary injunction, including “immediate, irreparable harm.” NYCEF No. 67 at ¶ 11. In her June 21, 2022 affidavit, Petitioner Sassower stated that “clear irreparable injury that will be suffered if the ‘ethics commission reform act of 2022’ is not stayed because our mandamus relief against JCOPE will be moot.” NYCEF No. 43 at ¶ 7(o). In her June 6, 2022 affidavit, Petitioner Sassower states that she seeks “to secure

## AG's August 18, 2022 Memorandum of Law in Opposition &amp; in Support [R.600-634]

judicial determination of the constitutionality and lawfulness of Part QQ as immediately as possible and prevent the mooting of petitioners' first two branches of mandamus relief against JCOPE that would result from JCOPE's demise." NYCEF No. 32.

Thus, the sole irreparable harm alleged is that since JCOPE would no longer exist as of July 8, 2022, Petitioners' requested mandamus relief against JCOPE to issue 15-day letters to the individuals complained of by petitioners, would be moot.

Petitioners fail to allege or support any claim that they will be irreparably harmed if preliminary injunctive relief is not granted. For this reason alone, Petitioner's application for preliminary injunctive relief should be denied. *Scott v. City of Buffalo*, 16 Misc. 3d 259, 290 Sup. Ct. Erie Cty. November 9, 2006) (plaintiff bears the burden of proof as to each element of the claim for injunctive relief).

## 2. Balancing of the Equities

For all of the reasons discussed above, equitable considerations weigh in favor of denying plaintiffs' request for preliminary injunctive relief. A preliminary injunction will not issue unless a balancing of equities, "including the public interest," tips in favor of such relief. *21Tech LLC v. GCOM Software LLC*, 2022 N.Y. Misc. LEXIS 728 (Sup. Ct. Albany Cty. Feb. 24, 2022) (Platkin, J.) (citations omitted). Petitioners fail to prove that the equities weigh in favor of their request for a preliminary injunction. Petitioners' demanded relief of staying ECRA from taking effect on July 8, 2022 is now moot, and with JCOPE having been abolished, it would be inequitable to prevent the new ethics commission to continue its duties as the Legislature intended.



AG's August 18, 2022 Memorandum of Law in Opposition &amp; in Support [R.600-634]

In sum, Petitioners' request for a preliminary injunction should be denied in its entirety and with prejudice.<sup>4</sup>

## POINTS II

### **RESPONDENTS' CROSS-MOTION TO DISMISS THE PETITION SHOULD BE GRANTED**

For the reasons that Petitioners cannot ultimately establish that they are likely to succeed on the merits of their claims, the Petition fails to state a cause of action. Accordingly, Respondents' cross-motion to dismiss the Petition should be granted in its entirety with prejudice.

## CONCLUSION

For the above reasons, Petitioners' motion for a preliminary injunction should be denied, and Respondents' cross-motion to dismiss should be granted in its entirety with prejudice.

Dated: Albany, New York  
August 18, 2022

LETITIA JAMES  
Attorney General  
State of New York  
Attorney for Respondents-Defendants  
The Capitol  
Albany, New York 12224

By: /s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General, of Counsel  
Telephone: (518) 776-2612

TO: Petitioners (via NYSCEF)

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<sup>4</sup> To the extent that petitioners seek further relief if their application for a preliminary injunction is denied (*See* NYCEF 75, ¶¶ 3(b) and 3(c)), this relief should be denied for the reasons articulated in *Ctr. For Judicial Accountability, Inc. v. Cuomo*, 167 AD 3d 1406, 1407-09 (3rd Dept. 2018).

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**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Gregory Rodriguez, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 7,893. The foregoing memorandum of law complies with the word count limit of 8,000 words approved by the Court. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

s/ Gregory Rodriguez  
Gregory Rodriguez

August 18, 2022 Affidavit of Emily Logue for JCOPE [R.635-642]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY  
-----

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

Petitioners,

**AFFIDAVIT OF EMILY  
LOGUE**

For a Judgment Pursuant to Article 78 of the CPLR,

**Index No. 904235-22**

-against-

NEW YORK STATE JOINT COMMISSION ON PUBLIC  
ETHICS, et. al

Respondents.  
-----

STATE OF NEW YORK )

)ss.:

COUNTY OF NEW YORK )

EMILY LOGUE, being duly sworn. deposes and states as follows:

1. From December 2020 to July 8, 2022, I was the Director of Investigations and Enforcement for Respondent, New York State Joint Commission on Public Ethics ("JCOPE"). Prior to that, from November 2019 to December 2020, I was the Acting Director of Investigations and Enforcement for JCOPE. On July 8, 2022, the employees, including myself, of JCOPE were administratively assigned to the new Commission on Ethics and Lobbying in Government, ("COELIG"), which replaced JCOPE pursuant to the Ethics Commission Reform Act of 2022, L 2022, ch 56, § 1, Part QQ ("ECRA").

August 18, 2022 Affidavit of Emily Logue for JCOPE [R.635-642]

2. I submit this affidavit in opposition to plaintiff's request for preliminary injunctive relief. For the reasons discussed below and in the accompanying Memorandum of Law, petitioners' request for a preliminary injunction should be denied.

3. The facts set forth in this affidavit are believed to be true and correct and are based upon my personal knowledge and upon information and belief, including information contained in the files of JCOPE.

***A. Replacement of JCOPE with COELIG Pursuant to ECRA.***

4. ECRA became effective 90 days after having been signed into law on July 8, 2022. ECRA repealed the former Executive Law § 94, which was in essence JCOPE's operating statute, and supplanted it with a new Executive Law § 94 establishing COELIG. See Exec. Law § 94(a).

5. ECRA calls for COELIG to provide for the transfer, assumption or other disposition of the records, property, and personnel affected by the change to Executive Law § 94, (Exec. Law § 94(b)), and as such, I am presently directing the investigations and enforcement function of COELIG.

6. ECRA changed, among other things, certain procedural steps required in investigations and enforcement proceedings conducted by COELIG, from those required by Executive Law § 94 during JCOPE's tenure, as described below.

***B. Executive Law § 94 during tenure of JCOPE.***

7. Under the version of Executive Law § 94 in place during JCOPE's tenure, if JCOPE received a sworn complaint alleging a possible violation of the laws within its jurisdiction, which includes Public Officers Law ("POL") §§ 73, 73-a, and 74, by an individual subject to its

## August 18, 2022 Affidavit of Emily Logue for JCOPE [R.635-642]

jurisdiction, it was required to notify the individual of those allegations and afford him or her the due process opportunity to submit, within fifteen days, a written response setting forth information “relating to” the alleged violations. (the “15-day letter” and “15-day letter response”). See former Exec. Law § 94(13)(a), L 2011, ch 399, §6 (“PIRA”); former Exec. Law § 94(13)(a), L 2016, ch 286, §§1, 2 (Part J).

8. The 15-day letter did not commence a formal investigation, which could not be pursued without a Commission vote. Nor was it an accusatory instrument or a complaint, or a discovery device or an investigative tool. Rather, the 15-day letter served to inform a potential subject of an investigation, (“recipient”), that allegations amounting to a potential ethics or lobbying law violation were being considered by the Commission, and it afforded the recipient an opportunity to reply in advance of any formal investigation being considered. Any response by the recipient was permissive, not compulsory. Thus, the 15-day letter and response were a statutory due process safeguard for recipients, affording them an opportunity to be heard before any formal claims were pursued. See former Exec. Law § 94(13)(a), L 2011, ch 399, §6; former Exec. Law § 94(13)(a), L 2016, ch 286, §§1, 2 (Part J).

9. Indeed, in 2016, the Legislature expanded that safeguard, amending the statute both to require that the notice provide the evidentiary basis for the allegations and the sections of law allegedly violated, and to allow a recipient to provide evidence and statements and to list witnesses on their own behalf. Exec. Law § 94(13)(a), L 2016, ch 286, §§1, 2 (Part J), (effective August 24, 2016).

10. Neither the original nor the amended version of former Executive Law § 94(13)(a) prescribed any time within which a 15-day letter, where appropriate, was to be sent. The statute did however, in both of its iterations, call for the Commission to vote on whether to commence a

August 18, 2022 Affidavit of Emily Logue for JCOPE [R.635-642]

full investigation of the matter under consideration within a stated period time – originally 45 days, and, later, 60 days – after the receipt of a sworn complaint alleging a violation of a law under JCOPE’s jurisdiction by a person subject to JCOPE’s jurisdiction. Specifically, the statute stated:

The commission shall, within forty-five calendar days after a complaint or a referral is received or an investigation is initiated on the commission’s own initiative, vote on whether to commence a full investigation of the matter under consideration to determine whether a substantial basis exists to conclude that a violation of law has occurred.... Such investigation shall be conducted if at least eight members of the commission vote to authorize it. . . .

Id.

11. ECRA made a number of changes to the investigative and enforcement provisions of Executive Law § 94. Among other things, ECRA eliminated any distinction between sworn and unsworn complaints, and removed the requirement that the Commission vote on whether to commence an investigation. Such a decision may now be made by the Commission or by staff. ECRA does, however, retain the 15-day letter due process notice procedure, requiring that the letter be sent to the subject if, after a “preliminary review” of a complaint or referral, the decision is made to “elevate such preliminary review into an investigation.” See Exec. Law § 94 (10)(f).

***C. History and Summary of Petitioners’ Complaints.***

12. Petitioners seek to compel action, specifically the sending of “15-day letters,” on seven complaints submitted by them to JCOPE on the following dates: June 27, 2013, December 11, 2014, August 31, 2020, March 5, 2021, November 24, 2021, December 17, 2021, and April 13, 2022. Petitioners attached copies of these complaints as exhibits to their petition.

13. Petitioners contend that the conduct alleged in their exhibited complaints, each of which names numerous parties – including in some instances over 200 unnamed members of the

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New York State Legislature, all members of multiple legislative committees, all members of the Commission on Judicial Conduct, and all statewide elected officials – constitute violations of POL § 74.

***D. JCOPE's interpretation of Executive Law § 94(13)(a).***

14. Before a 15-day letter could be issued, JCOPE needed to determine (1) if the complaint alleged misconduct by an individual subject to JCOPE's jurisdiction and (2) whether the alleged conduct by that individual, if proved, would be violative of a law within JCOPE's jurisdiction.

15. Petitioners' complaints each point to whole bodies of public officials, in some instances more than 200 public officials, with broad, nonspecific claims that the POL was violated. Petitioner's complaints contain only conclusory, aggregate assertions against multiple public officials without alleging how each individually purportedly engaged in actions that amount to a personal conflict of interest proscribed under POL § 74. Information tending to establish a violation of the POL, by specific individuals subject to the POL, is entirely absent from Petitioners' complaints to JCOPE.

16. Where the facts alleged do not, under the law, constitute violations of the POL, not only would it have been imprudent, but it would have been an abuse of its enforcement powers for JCOPE to undertake steps towards pursuing a formal investigation. Moreover, in such circumstances, no 15-day letter could properly be formulated, and none, therefore was issued.

17. In instances where JCOPE received a notarized complaint against individuals who fall within JCOPE's jurisdiction, *e.g.* persons subject to the POL, but for which the facts alleged –

## August 18, 2022 Affidavit of Emily Logue for JCOPE [R.635-642]

even if taken as established – would not support a violation of law within JCOPE’s power to enforce, a 15-day letter could not be properly formulated and none was issued.

18. Nonetheless, in such instances, in the time frame including petitioner’s last five complaints, (August 31, 2020 – April 13, 2022), JCOPE’s practice was to present complaints deficient of these factors but in which the persons accused of misconduct are in fact subject to the laws enforced by the Commission, within the 60-day window, to a full meeting of the JCOPE Commissioners for their consideration and review of the facts presented in the complaint before closing them.

19. JCOPE, the agency charged with administering PIRA, determined this procedural methodology to be not only a reasonable interpretation of the statute, but one consistent both with PIRA’s legislative intent and with the other provisions of the statute and other applicable law, as well as necessary to prevent baseless, harassing, and abusive misuse of the investigative and enforcement process, and onerous, senseless demands on the resources of the agency itself and multiple state entities.

20. As petitioner Sassower acknowledges, she was informed that the Commission voted to close her complaints dated November 24, 2021, December 12, 2021, and April 13, 2022.

***E. Changes to Complainant Notification Procedures and other Public Information.***

21. On January 25, 2022, the JCOPE Commissioners adopted certain regulatory amendments, including amendments to the notification provisions in the regulations governing JCOPE enforcement actions, which are found in 19 NYCRR Part 941. Specifically, among other authorizations, the amendments required notification to the complainant when a matter is closed.



August 18, 2022 Affidavit of Emily Logue for JCOPE [R.635-642]

These amended regulations were first adopted under SAPA on an emergency basis on January 25, 2022, and subsequently adopted permanently on June 28, 2022.

22. Previously, only in matters for which a substantial basis investigation *had been commenced* and later closed was such automatic notification of closure to the complainant permitted by operation of statute. See former Exec. Law § 94 (13)(b). In other circumstances, notification of closure was considered prohibited by the confidentiality restrictions contained in Executive Law § 94. See former Exec. Law § 94 (9-a) and § 94 (13)(b). In some instances, prior to January 2022, JCOPE Commissioners authorized a confidential communication to the complainant in specific matters that a vote had been taken on their complaint.

23. Also, among the regulatory amendments first adopted by JCOPE Commissioners in January 2022, and later permanently adopted on June 28, 2022, was an amendment to 19 NYCRR Part 941 to include a new section relating to JCOPE's annual report. Specifically, 19 NYCRR Part 941.16 (e) states:

Pursuant to this section, the Commission has determined that it is in the public interest to publicly release information relating to investigative and enforcement matters as follows: (1) its annual report, in accordance with the requirements in Executive Law § 94 (9)(l), shall include: (i) a listing by assigned number of each complaint and referral received which alleged a possible violation within the Commission's jurisdiction, including the current status of each complaint; and (ii) where a matter has been resolved, the date and nature of the disposition and any sanction imposed, with redactions, as necessary, to protect the identity of the Subject, Respondent, and Complainant as required under the confidentiality requirements in Executive Law § 94.

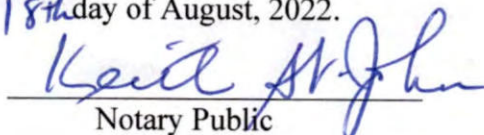
24. Accordingly, the JCOPE annual report for the year 2021, which was published on July 7, 2022, includes a listing by assigned number of each complaint received in 2021 and its

August 18, 2022 Affidavit of Emily Logue for JCOPE [R.635-642]

status as of December 31, 2021, *i.e.*, whether closed, settled or pending, as well as a listing of all matters closed or settled in 2021.

  
Emily Logue

Sworn to before me this  
18<sup>th</sup> day of August, 2022.

  
Notary Public

My Commission expires 5/29/26  
# 025T6375567  
Schenectady County



Affirmation of Leslie Arp for IG [R.643-649]

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF ALBANY

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In the Matter of the Application ofELENA RUTH SASSOWER, CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC.,

Petitioners/Plaintiffs,

For a Judgment Pursuant to Article 78

of the Civil Practice Law and Rules

Index No. 904235-22

-against-

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS,  
et al.,

Respondents/Defendants.

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Leslie M. Arp affirms the following under penalty of perjury:

1. I am a Confidential Investigator and Chief of the Case Management Unit for the New York Offices of the Inspector General ("OIG"). I have worked for four Inspectors General and have been employed by OIG for 11 years.
2. Prior to my employment with OIG, I was employed as a senior investigator in the Bureau of Criminal Prosecution at the New York State Office of the Attorney General. I have worked in law enforcement for 33 years, beginning my career as a police officer in the City of Plantation, Florida.
3. At OIG, I supervise six staff members in the Case Management Unit ("CMU") whose job is to manage all complaints received by OIG on an annual basis. I am fully familiar with New York Executive Law, Article 4-A, which is OIG's enabling statute. This law directs the IG to "receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption,

## Affirmation of Leslie Arp for IG [R.643-649]

fraud, criminal activity, conflicts of interest or abuse in any covered agency.” (Executive Law Article 4-A Section 53(1)). In 2020 and 2021, CMU processed 4,967 and 5,496 complaints, respectively.<sup>1</sup>

4. OIG receives complaints in a variety of ways, including, but not limited to: telephone referrals, email submissions, facsimiles, hotline calls, and letter correspondence. Complaints received are entered into a case tracking system and are managed in one of two ways. Certain complaints are logged by CMU and then reviewed and evaluated by OIG executive staff. These types of complaints are often time sensitive, related to litigation, may involve a pending Freedom of Information Law request, or may involve highly confidential subject matters. All other complaints not falling into these categories are logged by CMU and added to a docket, which is reviewed and discussed weekly by OIG managers. This weekly docket meeting is called Case Review Panel (“CRP”).

5. OIG’s policy for managing complaints is detailed in OIG’s Case Management Policy: 0101, which is appended hereto as **Exhibit A**.

6. Sometimes correspondence addressed to the Inspector General is received or forwarded to CMU and logged with a matter number to track status. This action is taken to better organize correspondence that may not necessarily be considered a complaint, but whose subject matter is important and a reply by OIG may be warranted. When such correspondence is received, I often speak with OIG press and executive staff to determine the preferred course of action.

7. On November 2, 2021, Ms. Sassower sent OIG a letter addressed to Inspector General (“IG”) Lucy Lang.<sup>2</sup> As noted above in Paragraph 6 and in accordance with our process, this letter was internally sent to CMU where it was logged with a matter number to track its status.<sup>3</sup> As is our normal practice, the letter was included in the November 10<sup>th</sup>, 2021 weekly Case Review Panel so as to assess how best to handle. The CRP found the letter difficult to decipher in that it did not provide any basis to support its conclusory allegations and overall offered inaccurate statements. We agreed to seek further guidance from executive staff who, after reviewing the letter, concurred with CRP’s assessment. As such we collectively determined that no action would be taken at that time.<sup>4</sup>

<sup>1</sup> OIG is also comprised of the New York State Workers Compensation Fraud and Office of the Welfare Fraud Inspectors General and the complaints for these program areas are included in 2020 and 2021 statistics. These statistics do not include the Office of the Gaming Inspector General, because it did not join until June 2021.

<sup>2</sup> Lucy Lang was not appointed as New York’s Inspector General until November 29, 2021. From September 20, 2021 until November 29, 2021, Robyn Adair was the Acting IG.

<sup>3</sup> 2662-089-2021 is the assigned matter number.

<sup>4</sup> NA or “no action” was assigned to Sassower’s November 2, 2021 correspondence.

## Affirmation of Leslie Arp for IG [R.643-649]

8. As a matter of practice at OIG, when a NA or “no action” is assigned to a matter, no additional follow up or communication with the complainant occurs. In accordance with this longstanding practice, CMU staff did not inform Ms. Sassower of the status of her November 3, 2021 letter, nor was it legally obligated to do so.

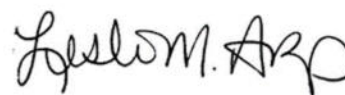
9. On December 17, 2021, Ms. Sassower sent OIG a letter by carbon copy that was addressed to managers at the former Joint Commission on Public Ethics (“JCOPE”). Upon receipt by OIG, the Sassower letter was internally sent to CMU in accordance with the practice noted above in Paragraph 6. It should be noted that the December 17, 2021 letter was not addressed to OIG nor did it expressly or implicitly request OIG to review allegations. Instead, the letter was addressed to JCOPE and requested actions be taken by JCOPE; OIG was merely carbon copied. As the Chief of CMU, I determined that instead of adding this letter to the CRP docket, I conferred with OIG executive staff. We collectively determined it was not a complaint submitted to OIG for review because the letter was addressed to JCOPE, sought specific actions to be taken by that commission, and OIG was carbon copied for informational purposes only. CMU added this letter to the assigned matter and OIG determined that no further action was appropriate. Notably, Ms. Sassower’s letter to JCOPE did not ask OIG to review her allegations or take any specific actions with respect to her allegations.

10. On May 16, 2022, Ms. Sassower sent correspondence addressed to IG Lang that incorrectly accused OIG staff of violating office policy and failing to address allegations contained in her November 2, 2021 letter.

11. New York Executive Law Article 4-A does not expressly require the IG to investigate all complaints submitted to OIG. Instead, OIG is afforded the discretion to evaluate each complaint to determine its credibility. OIG Case Management Policy 0101 details the process for such complaint review. See Exhibit A.

12. OIG staff complied with its enabling statute and policy when determining to take no action after reviewing Ms. Sassower’s complaint dated November 2, 2021 and her letter addressed to JCOPE dated December 17, 2021.

Respectfully submitted,



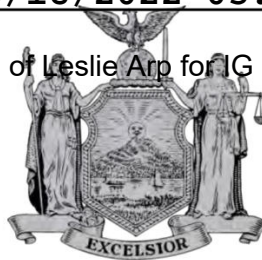
Leslie M. Arp, Chief

Affirmation of Leslie Arp for IG [R.643-649]

# Exhibit

# A

Affirmation of Leslie Arp for IG [R.643-649]



STATE OF NEW YORK  
OFFICE OF THE INSPECTOR GENERAL  
OFFICE OF THE WELFARE INSPECTOR GENERAL  
OFFICE OF THE WORKERS' COMPENSATION FRAUD INSPECTOR GENERAL

## Policy and Procedure Manual

**FUNCTIONAL AREA: OPERATIONS**  
**POLICY TITLE: CASE MANAGEMENT UNIT**  
**POLICY NUMBER: O101**  
**EFFECTIVE DATE: 8/8/2016**  
**REVISED: 3/16/2020**

### POLICY

The Office of the New York State Inspector General, the Office of the New York State Welfare Inspector General, and the Office of the New York State Workers' Compensation Fraud Inspector General (collectively known as "OIG") shall conduct all investigations, examinations and reviews in a professional manner. Many OIG investigations commence upon receipt of complaints from individuals, received in a variety of forms including: personal delivery, regular mail, telephone (hotline), e-mail, and website submission. The OIG have established a Case Management Unit ("CMU") that is supervised by a Chief Investigator. The CMU is responsible for processing all potential investigations received and being considered by the OIG.

The CMU is responsible for OIG quality control. The CMU tracks OIG referrals to covered agencies; secures and reviews for sufficiency responses from covered agencies about actions taken; and communicates with covered agencies, as needed, to ensure that adequate, timely responses are received. The CMU also ensures that all these efforts are documented in OIG's case management system. The CMU Chief Investigator reports to the Executive Deputy Inspector General on a weekly basis regarding these efforts.

### PROCEDURES

#### 1. Processing of Complaints

- A. OIG staff members are authorized and encouraged to accept complaints. Information regarding complaints, however received, should be brought to the attention of the appropriate Deputy Inspector General or Chief Investigator, who will ensure that the information is forwarded to the CMU as soon as possible. If the Deputy Inspector General or Chief Investigator is not available, the OIG staff member receiving the complaint should forward it to the CMU as soon as possible. OIG staff members who

Accept complaints should be aware that conflict-of-interest principles apply, and that if they accept complaints, they must alert the CMU and  
Affirmation of Leslie Arp for Office of the Inspector General  
R.643-649  
OIG's Chief Counsel.

- B. No investigation will be initiated until a complaint is assigned a case number, unless prior approval by an OIG Executive Staff member is obtained.
- C. The CMU is responsible for processing all complaints. Upon receipt of a complaint, the CMU will complete the following steps:
  - 1) Assign the complaint a case number. The case number is an 11-digit number (0000-000-0000) designated as follows: Digits 1-4 denote the numerical sequence of the complaint; digits 5-7 identify the state agency referenced in the complaint; digits 8-11 correspond to the current year. (Note: investigative action can begin upon assignment of case number without completion of remaining steps. Also note that some 5-7 digits are associated with Office of the Welfare Inspector General and/or Workers' Compensation Board external crimes, not employee misconduct cases that use a state agency code.)
  - 2) Assign the complaint a case name. The case name should refer to the principal subject of the complaint and will be the name of an individual (last name, first name; if multiple subjects, case name will be principal subject, et. al.), or agency/organization.
  - 3) Assign the complaint a case type. The case type describes the specific misconduct alleged in the complaint. Where there are multiple allegations, the case type should refer to the most serious allegation. Check all individuals (complainant, subject, witnesses, etc.) and business entities associated with the complaint against information in Law Manager in order to determine possible involvement with prior OIG investigations. The results of Law Manager searches are to be included on the Complaint Intake Form.
  - 4) The CMU shall prepare an electronic binder and a paper binder, which shall be distributed on a weekly basis to the Inspector General and all members of the Case Review Panel ("CRP"). The binders shall consist of all complaints received in the prior week, as well as outstanding matters from prior weekly CRP meetings (i.e., matters placed in "Preliminary Investigation" status by the CRP to determine additional facts before CRP decision made, etc.).

## 2. Case Review Panel

- A. The CRP consists of the Executive Deputy Inspector General, the Chief Deputy Inspector General, and the Deputy Inspectors General. Other members of the Executive Staff may participate. Members of the Executive Staff may be excused by the Inspector General based on availability. In addition, the following OIG staff shall participate in the CRP, along with OIG staff members they designate as being required to attend:
  - Chief, Case Management Unit
  - Chief Investigators
  - Special Deputy for Communications and External Affairs
- B. The CRP shall discuss each new complaint and make a determination as to the actions to be taken. The CMU Chief or CMU-designated staff shall document the actions taken by the CRP for entry into OIG's case management system. The determinations that may be



## Affirmation of Leslie Arp for IG [R.643-649]

- 1) No Action: There will not be any investigative activity in response to the complaint.
- 2) Referral: The complaint will be referred to the affected agency and/or another agency having jurisdiction, and the CMU shall prepare a referral letter to the agency/ies designated by the CRP, and will request a written response to OIG within 45 days. As appropriate CMU will also communicate to the complainant advising him/her that his/her complaint has been referred and to what agency. The letter will be signed by the Chief of CMU and will be maintained in the case management system. CMU will also follow up with the respective agencies within 45 days if CMU does not receive a response to the original referral letter.
- 3) Preliminary Investigation ("PI"): A matter will be considered outstanding and discussed at the next CRP meeting if it is determined that additional facts are necessary to decide whether the matter should be referred, opened as an investigation, or deemed "No Action." A staff member will be assigned the task of gathering the additional information. Preliminary investigations are intended to be completed within two weeks. If the preliminary investigation shows no merit, it will be closed at CRP. If a preliminary investigation is conducted and it is determined at CRP that it is unsubstantiated and there are no findings or recommendations, the Chief Investigator, Deputy Chief Investigator, or investigator, with approval, will send an email to CMU to close, refer or no action the case. The email should contain a brief explanation as to why the case is being closed, referred, or no further action is being taken.
- 4) Investigation: An OIG case shall be opened. Legal, Investigations and Audit staff are assigned at the time the case is opened by CRP by respective Deputy Inspectors General and Chief Investigators.

C. Upon completion of the CRP meeting, CMU staff is responsible for updating the OIG case management system to reflect the disposition of each complaint. The CMU will prepare a Complaint Intake Form for cases that are opened. Assigned staff shall be notified by the case management system. Once the complaint is opened, CMU will also add the initial complaint and supporting documents to the J:Drive.

### 3. Processing Non-Jurisdictional Correspondence ("Dead") Complaints

- A. Non-jurisdictional or "dead" complaints are complaints that the Inspector General lacks jurisdiction to investigate. Complainants and/or agencies are advised that the matter does not fall within the Inspector General's jurisdiction. If the complaint was made by a private citizen, the citizen is provided with the contact information for the agency/entity that would have jurisdiction over the complaint. If the complaint falls within another agency's jurisdiction the complaint is sent to the agency for whatever action it deems appropriate. No response is required by OIG. Chief Counsel should be consulted in regard to any questions about OIG's jurisdiction.
- B. Once it has determined that the complaint does not fall within OIG's jurisdiction, the CMU will assign a correspondence (dead) number.



**STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES  
Attorney General

STATE COUNSEL DIVISION  
Litigation Bureau

Writer Direct: (518) 776-2612

August 18, 2022

Office of the Clerk of the New York State Supreme Court  
Supreme and County Courts  
Albany County Courthouse  
Albany, NY

Re: ***No Fee Authorization Letter in ...***

*Elena Ruth Sassower, Center for Judicial Accountability, Inc. v. New York State Joint  
Commission on Public Ethics, et al.*  
Index No. 904235-22

Dear Clerk:

Submitted herewith for electronic filing please find Respondents' Notice of Cross-Motion, Memorandum of Law and accompanying supporting affidavits. As the Respondents are agencies of the State of New York or individuals sued in their capacity as agents of the State of New York, no fee is required to be paid for the filing of this motion.

Thank you kindly for your consideration of this matter.

Respectfully yours,  
/s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General

cc: Petitioners (via NYSCEF)

Petitioners' September 1, 2022 Verified Amendment to June 6, 2022 Verified Petition [R.651-654]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

**VERIFIED AMENDMENT**  
**TO JUNE 6, 2022 VERIFIED**  
**PETITION/COMPLAINT**

Petitioners/Plaintiffs,

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Pursuant to CPLR §3025(a), petitioners/plaintiffs amend their June 6, 2022 verified  
petition/complaint to make the following four additions:

Petitioners' September 1, 2022 Verified Amendment to June 6, 2022 Verified Petition [R.651-654]

**¶14: “Respondent LETITIA JAMES [hereinafter ‘AG JAMES’]**

is amended to add the following, as a new paragraph, after the first paragraph:

“Pursuant to CPLR §3014 ‘A copy of any writing which is attached to a pleading is a part thereof for all purposes.’ The March 5, 2021 complaint to JCOPE – [Exhibit D-1 to the petition](#) – furnishes all the graphic particulars and evidence of the active, participating role of AG JAMES in the mass of corruption and larceny, involving the state budget and the pay raises – of which she is a beneficiary, “protected” by New York’s sham public protection/ethics authorities.”

**¶15: “Respondent THOMAS DiNAPOLI [hereinafter ‘Comptroller DiNAPOLI’]**

is amended to add the following, as a new paragraph, after the first paragraph:

“Pursuant to CPLR §3014 ‘A copy of any writing which is attached to a pleading is a part thereof for all purposes.’ The March 5, 2021 and June 27, 2013 complaints to JCOPE – [Exhibit D-1](#) and [Exhibit G](#) to the petition, respectively – furnish all the graphic particulars and evidence of the active, participating role of Comptroller DiNAPOLI in the mass of corruption and larceny, involving the state budget and the pay raises – of which he is a beneficiary, “protected” by New York’s sham public protection/ethics authorities.”

**¶¶27-41: AS AND FOR A FIRST CAUSE OF ACTION**

**“Directing that the New York State Joint Commission on Public Ethics  
Comply with Executive Law §§94.13(a) and (b) with Respect to Petitioners’  
Seven Complaints – Starting with the Ministerial 15-Day Letters”**

is amended to add to its title:

**“. Alternatively, or Additionally, Declaring JCOPE’s Failure to Issue 15-  
Day Letters to be a Violation of Lawful Procedure, Affected by Error of  
Law, Arbitrary, Capricious, and/or an Abuse of Discretion.”**

Consistent therewith, the “Prayer for Relief” (at p. 48) pertaining to the First Cause of Action is amended to add the same language – and a new last paragraph of the First Cause of Action is inserted, as follows:

“41-a. Petitioners’ entitlement to a declaration that JCOPE’s failure to issue 15-day letters was violative of lawful procedure, affected by error of law, arbitrary, capricious, and an abuse of discretion” is pursuant to CPLR §3001 and CPLR §7803.3.”

Petitioners' September 1, 2022 Verified Amendment to June 6, 2022 Verified Petition [R.651-654]

**¶¶59-77: AS AND FOR A FIFTH CAUSE OF ACTION**

**“Directing that the New York State Inspector General Comply with the Mandates of Executive Law Article 4-A and its own Policy and Procedure Manual, Violated by its Handling of Petitioners’ November 2, 2021 Complaint – and Declaring the Provision of the Policy and Procedure Manual that Allows the Inspector General to Take ‘No Action’ on Complaints involving ‘Covered Agencies’ to be Violative of Executive Law §53.1 and Void”**

is amended to add to its title:

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

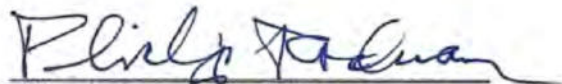
Consistent therewith, the “Prayer for Relief” (at p. 49) pertaining to the Fifth Cause of Action is amended to add the same language – and a new last paragraph of the Fifth Cause of Action is inserted, as follows:

“77-a. Petitioners’ entitlement to a declaration that the Inspector General’s ‘No Action’ determination with respect to petitioners’ November 2, 2021 complaint was a violation of lawful procedure, affected by error of law, arbitrary, capricious, and/or an abuse of discretion is pursuant to CPLR §3001 and CPLR §7803.3.”

Petitioners' September 1, 2022 Verified Amendment to June 6, 2022 Verified Petition [R.651-654]



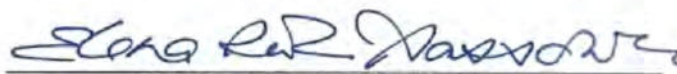
ELENA RUTH SASSOWER

Sworn to before me this  
1<sup>st</sup> day of September 2022

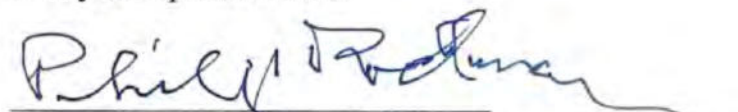
Notary Public

PHILIP L. RODMAN  
Notary Public, State of New York  
No. 027006396593  
Qualified in Westchester County  
Commission Expires Sept. 30, 2023VERIFICATIONSTATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss.:

I am the individual petitioner/plaintiff in the within Article 78 proceeding/declaratory judgment/citizen-taxpayer action and director of the corporate petitioner/plaintiff CENTER FOR JUDICIAL ACCOUNTABILITY, INC. I have written the annexed verified amendment to the June 6, 2022 verified petition/complaint and attest the same to be true and correct of my own knowledge, information, and belief.

PHILIP L. RODMAN  
Notary Public, State of New York  
No. 027006396593  
Qualified in Westchester County  
Commission Expires Sept. 30, 2023

ELENA RUTH SASSOWER

Sworn to before me this  
1<sup>st</sup> day of September 2022

Notary Public

Petitioners' September 3, 2022 CPLR §2214(c) Notice of Papers to be Furnished to the Court [R.655-661]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

Petitioners/Plaintiffs,

**CPLR §2214(c) NOTICE**  
**of Papers to be Furnished**  
**to the Court**

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
**TO: Respondents/Defendants:**

PLEASE TAKE NOTICE that pursuant to [CPLR §2214\(c\)](#), you are required to furnish the Court with all “papers...necessary to the consideration of the questions involved” on the hearing of petitioners’ June 23, 2022 notice of petition and their order to show cause as amended by the Court on July 8, 2022 – presumably the September 19, 2022 return date fixed by the Court – and on the

Petitioners' September 3, 2022 CPLR §2214(c) Notice of Papers to be Furnished to the Court [R.655-661]

hearing of your August 18, 2022 cross-motion with respect to these, presumably the September 22, 2022 date on which you made it returnable.

In addition to the papers itemized by petitioners' previous [CPLR §2214\(c\) notice of papers to be furnished to the Court \(#60\) \(#64\)](#), served upon you on June 28, 2022, to which your August 18, 2022 cross-motion does not refer and which furnishes none of the papers, the following are to be furnished to the Court, based on the affidavit and affirmation accompanying your August 18, 2022 cross-motion:

I.

**Based on your cross-motion's August 18, 2022 affidavit of JCOPE Director of Investigations and Enforcement Emily Logue, now occupying that position at CELG:**

- a. Pertaining to her ¶8: any written document substantiating her assertion that the 15-day letters required by Executive Law §94.13(a) were not “a discovery device or investigative tool”.
- b. Pertaining to her ¶14: any written document substantiating what she purports to be “*JCOPE's interpretation of Executive Law §94(13)(a)*”, namely “Before a 15-day letter could be issued, JCOPE needed to determine (1) if the complaint alleged misconduct by an individual subject to JCOPE's jurisdiction and (2) whether the alleged conduct by that individual, if proved, would be violative of a law within JCOPE's jurisdiction.”, thereby eliminating from Executive Law §94(13)(a) that the complaint could be against an “entity subject to the jurisdiction of the commission”.
- c. Pertaining to her ¶¶15, 16, 17 regarding petitioners' seven complaints to JCOPE – Exhibits [A](#), [B](#), [C](#), [D](#), [E](#), [F](#), and [G](#) to [the petition](#):
  - i. any written document substantiating her ¶15 that the complaints made only “broad, nonspecific claims that the POL was violated. ...contain only conclusory, aggregate assertions against multiple public officials without alleging how each individually purportedly engaged in actions that amount to a personal conflict of interest proscribed under POL §74. Information tending to establish a violation of POL, by specific individuals subject to the POL, is entirely absent from Petitioners' complaints to JCOPE”;
  - ii. any written document substantiating her ¶16 that “the facts alleged [did] not, under the law, constitute violations of POL” and, therefore, “no 15-day letters could properly be formulated”;



Petitioners' September 3, 2022 CPLR §2214(c) Notice of Papers to be Furnished to the Court [R.655-661]

- iii. any written document substantiating her ¶17 that “the facts alleged – even if taken as established – would not support a violation of law within JCOPE’s power to enforce” and, therefore, “a 15-day letter could not be properly formulated”.
- d. Pertaining to her ¶18:
  - i. any written document reflecting the existence of “JCOPE’s practice” of presenting, “within the 60-day window”, “deficient” complaints against persons within its ethics jurisdiction “to a full meeting of the JCOPE Commissioners for their consideration and review of the facts presented in the complaint before closing them”;
  - ii. any written document as to when such “practice” began;
  - iii. any written document reflecting that such “practice” was not only “within the time frame [of] petitioner’s last five complaints, (August 31, 2020 – April 13, 2022)”, but was the practice followed with respect to “petitioner’s last five complaints”.
- e. Pertaining to her ¶19:
  - i. any written document as to who originated “th[e] procedural methodology” of presenting “to a full meeting of the JCOPE Commissioners” the “deficient” complaints – JCOPE staff or JCOPE commissioners;
  - ii. any written document as to whether, pursuant to this “procedural methodology”, the commissioners “closing” of the “deficient” complaints was upon their voting to do so and, if so, was it by vote upon each complaint individually or in bulk;
  - iii. any written document showing this “procedural methodology” to be consistent with “PIRA’s legislative intent and with other provisions of the statute and other applicable law” – and identifying the referred-to “other provisions of the statute and other applicable law”.
- f. Pertaining to her ¶21:
  - i. any written document reflecting why the “certain regulatory amendments...found in 19 NYCRR Part 941...first adopted under SAPA on an emergency basis on January 25, 2022, and subsequently adopted permanently on June 28, 2022” does not contain the aforesaid JCOPE “practice”/“procedural methodology” pertaining to “deficient” complaints;
  - ii. any written document reflecting the aforesaid JCOPE “practice”/“procedural methodology” in prior versions of 19 NYCRR Part 941.

Petitioners' September 3, 2022 CPLR §2214(c) Notice of Papers to be Furnished to the Court [R.655-661]

- g. Pertaining to her ¶22:
- i. any written document reflecting JCOPE's interpretation that because of "confidentiality restrictions contained in Executive Law §94", it could not inform complainants of the "closure" of their complaints pursuant to Executive Law §94.13(b), as, for instance, written notification of this interpretation to petitioners or inclusion of the interpretation in JCOPE's annual reports, together with a recommendation for statutory amendment or clarification;
  - ii. any written document reflecting why, if JCOPE actually interpreted "the confidentiality restrictions contained in Executive Law §94" as barring it from informing complainants of "defective" complaints, of the "closure" of their complaints, it was able to overcome same by its [2022 amending of 19 NYCRR Part 941](#), adding §941.3(d), materially replicating the language of Executive Law §94.13(b) in stating:

“(d) Notice of Closure. If, upon receipt and review of a matter, it is determined at any stage that there is no violation, that any potential violation has been rectified, or if the matter is closed for any other reason, the Commission shall provide written notice as follows:  
(1) to the Complainant, if any; ...”;
  - iii. any written document as to the number of “instances, prior to January 2022, [that] JCOPE Commissioners authorized a confidential communication to the complainant in specific matters that a vote had been taken on their complaint”;
  - iv. any written document as to whether “prior to January 2022, JCOPE Commissioners authorized [any] confidential communication[s]” to petitioners as to votes taken on their complaints – and, if so, how many.
- h. Pertaining to her ¶23: any written document explaining the reason for the “amendment to 19 NYCRR Part 941 to include a new section relating to JCOPE's annual report” – 19 NYCRR Part 941.16(e) – a section repeating Executive Law §94.9(l)(i)'s requirement that the annual report include “a listing by assigned number of each complaint and referral received which alleged a possible violation within the Commission's jurisdiction, including the current status of each complaint”, stating such to be “in the public interest”.
- i. Pertaining to the whole of her affidavit: any written document reflecting who assisted her in its drafting, reviewed it for truthfulness and accuracy, and determined she should not respond to the particularized allegations in the petition pertaining to JCOPE, most importantly, ¶¶6, 16-26, 27-41, 42-47 –

Petitioners' September 3, 2022 CPLR §2214(c) Notice of Papers to be Furnished to the Court [R.655-661]

such persons reasonably including JCOPE's last executive director, Sanford Berland, Esq., currently occupying that position at CELG.

## II.

### **Based on your cross-motion's undated affirmation of Office of Inspector General Case Management Chief Leslie Arp, Esq.:**

- a. Pertaining to her ¶7:
  - i. any written document substantiating its footnote 2 that "Lucy Lang was not appointed as New York's Inspector General until November 29, 2021", in view of the fact that [Governor Hochul announced the appointment on October 21, 2021](#) – and petitioners' November 2, 2021 complaint – [Exhibit I \(eye\)](#) the petition – reflects that the appointment had already been made;
  - ii. any written document reflecting why, if petitioners' November 2, 2021 complaint was only deemed to be a "letter"/"correspondence" addressed to Inspector General Lang, it was acted upon by the "November 10<sup>th</sup> 2021 weekly Case Review Panel", rather than furnished to the by-then appointed Inspector General Lang;
  - iii. any written document of the names and titles of the members of "the November 10<sup>th</sup>, 2021 weekly Case Review Panel [who]...found the letter difficult to decipher in that it did not provide any basis to support its conclusory allegations and overall offered inaccurate statements" – and the allegations and statements they deemed to be "conclusory", unsupported, or "inaccurate";
  - iv. any written document of the names and titles of the "executive staff [who], after reviewing the letter, concurred with CRP's assessment";
  - v. any written document that all these persons "collectively determined that no action would be taken at that time".
- b. Pertaining to her ¶¶8-10:
  - i. any written document substantiating her inference that the only communications the Office of the Inspector General (OIG) received from petitioners following the November 2, 2021 "letter addressed to Inspector General ('IG') Lucy Lang" was a December 17, 2021 "letter...addressed to managers at the former Joint Commission on Public Ethics ('JCOPE')" – [Exhibit B to the petition](#) – and "On May 16, 2022...correspondence addressed to IG Lang" – [Exhibit K to the petition](#);

Petitioners' September 3, 2022 CPLR §2214(c) Notice of Papers to be Furnished to the Court [R.655-661]

- ii. any written document setting forth OIG's policy of responding or not responding to oral and written inquiries of complainants as to the status of their complaints – or reflecting any legal impediment to furnishing complainants with such information;
  - iii. any written document reflecting the names of the "OIG executive staff", referred to in her ¶9, who implicitly agreed with her determination not to add "the December 17, 2021 letter"...to the CRP docket" and "determined that no further action was appropriate", other than adding it "to the assigned matter";
  - iv. any written document reflecting how the OIG handled petitioners' May 16, 2022 "correspondence to IG Lang" – such information being completely absent from her ¶10, including (a) who determined that it "incorrectly accused OIG staff of violating office policy and failing to address allegations contained in her November 2, 2021 letter" – and the basis for so-determining; (b) whether it was added "to the CRP docket" or added "to the assigned matter"; and (c) that no response would be communicated to petitioners.
- c. Pertaining to her ¶¶11-12:
- i. any written document establishing OIG's compliance with "OIG Case Management Policy 0101", whose particulars of non-compliance, substantiated by documentary evidence including "OIG Case Management Policy 0101", are specified by petitioners' May 16, 2022 "correspondence to IG Lang" and their petition's fifth cause of action(¶¶59-77);
  - ii. any written document reflecting a determination that petitioners' November 2, 2021 complaint lacked "credibility" or specifying other grounds for exercise of "discretion" to take "no action".
- d. Pertaining to the whole of her affirmation: any written document reflecting who assisted her in its drafting, reviewed it for truthfulness and accuracy, and determined she should not identify having read the petition and not respond to its particularized allegations pertaining to the Inspector General, most importantly, ¶¶8, 21-24, 59-77 – such persons reasonably including Inspector General Lang.

PLEASE ADDITIONALLY TAKE NOTICE that your failure to make such production will further entitle petitioners to the granting of the relief sought by their [June 23, 2022 notice of petition](#), their [order to show cause, as signed by the Court, amended, on July 8, 2022](#), and their [September 1, 2022 verified amendment](#) to their [June 6, 2022 verified petition/complaint](#).

Petitioners' September 3, 2022 CPLR §2214(c) Notice of Papers to be Furnished to the Court [R.655-661]

Dated: September 3, 2022  
White Plains, New York

Yours, etc.



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

10 Stewart Place, Apt. 2D-E  
White Plains, New York 10603  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)

TO: Assistant Attorney General Gregory Rodriguez

Petitioners' September 15, 2022 CPLR §3120 Notice for Discovery & Inspection [R.662-663]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

**Index #: 904235-22**

**September 15, 2022**

Petitioners/Plaintiffs,

**CPLR §3120 NOTICE**  
**for Discovery & Inspection**

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
**TO: Respondents/Defendants:**

PLEASE TAKE NOTICE that pursuant to CPLR §3120, you are required to produce the  
following documents in your possession, custody, or control, in electronic form,<sup>1</sup> to

---

<sup>1</sup> 22 NYCRR §202.20-c(e): “The parties are encouraged to use the most efficient means to review documents, including electronically stored information (‘ESI’), that is consistent with the parties’ disclosure obligations under Article 31 of the CPLR and proportional to the needs of the case.”

Petitioners' September 15, 2022 CPLR §3120 Notice for Discovery & Inspection [R.662-663]

[elena@judgewatch.org](mailto:elena@judgewatch.org), or, if in paper, for inspection and copying at such location and time as mutually agreed-upon by the parties, 20 days from today, *to wit*, Wednesday, October 5, 2022:

- (1) the documents itemized by petitioners' June 28, 2022 CPLR §2214(c) notice of papers to be furnished to the Court ([#60](#)) ([#64](#)) – these pertaining to petitioners' sixth through tenth causes of action;
- (2) the documents itemized by petitioners' September 3, 2022 CPLR §2214(c) notice of papers to be furnished to the Court ([#85](#)) – these pertaining to petitioners' first, second, and fifth causes of action.

These two CPLR §2214(c) notices, which “specify the target documents with sufficient precision”,<sup>2</sup> are above-hyperlinked to the NYSCEF docket and herein incorporated by reference, as if set forth in full.

PLEASE ADDITIONALLY TAKE NOTICE that, in conjunction with this notice, petitioners have requested the Court to enforce your compliance pursuant to CPLR §3124, by their notice of motion of today's date.

Dated: September 15, 2022  
White Plains, New York

Yours, etc.

s/Elena Ruth Sassower

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

10 Stewart Place, Apt. 2D-E  
White Plains, New York 10603  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)

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<sup>2</sup> “Although [they] use the terms ‘and’ and ‘all’, they nonetheless specify the target documents with sufficient precision” (*Bardi v. Mosher*, 197 A.D.2d 797, 798 (3<sup>rd</sup> Dept. 1993).; *See, also*, New York Practice, David Siegel//Patrick Connors (6<sup>th</sup> ed. 2018) §362: “directed at ‘limited and specific subject matter’”.

Petitioners' September 15, 2022 Affidavit in Opposition & in Support [R.664-670]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

**September 15, 2022**

Petitioners/Plaintiffs,

**Affidavit in Opposition to  
Respondents' August 18,  
2022 Cross-Motion & in  
Support of Petitioners'  
September 15, 2022 Motion  
for Sanctions, Summary  
Judgment & Other Relief**

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        ) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named unrepresented individual petitioner seeking representation/intervention for myself and the unrepresented corporate petitioner, Center for Judicial



Petitioners' September 15, 2022 Affidavit in Opposition & in Support [R.664-670]

Accountability, Inc. (CJA), by the New York State Attorney General, consistent with Executive Law §63.1 and State Finance Law §123 *et seq.* I am fully familiar with all the facts, papers, and proceedings heretofore had.

2. This affidavit is submitted in opposition to respondents' August 18, 2022 cross-motion to dismiss our June 6, 2022 verified petition/complaint and in reply to their opposition to the TRO/preliminary injunction sought by our order to show cause, signed by the Court, amended, on July 8, 2022 – which they have embodied in the memorandum of law accompanying their cross-motion. Additionally, it is submitted in support of our entitlement to summary judgment pursuant to CPLR §3211(c).

3. The facts and law pertaining to the foregoing are set forth by an analysis of respondents' August 18, 2022 cross-motion, which I wrote and to whose accuracy I swear – Exhibit A hereto (#88). It establishes that the cross-motion is not just frivolous, but a “fraud on the court”, proving the truth of what I stated previously in five separate affidavits<sup>1</sup> – and directly to the Court on July 7, 2022, *to wit*, that respondents have no defense to the petition's ten causes of action, that we have an entitlement to summary judgment as to all ten, and that, as to the sixth cause of action, we had an entitlement, in the interim, to a TRO/preliminary injunction to prevent the “ethics commission reform act of 2022” from taking effect on July 8, 2022. The transcript of the July 7, 2022 oral argument is Exhibit C (#91). Correspondence pertaining thereto is Exhibits B-1 and B-2 (#89, #90).

4. Although the Court is vested with inherent and statutory powers to uphold the integrity of the judicial process, without the necessity of a formal motion, petitioners are simultaneously filing a notice of motion (#93) for the relief to which the analysis entitles them:

- costs and maximum sanctions pursuant to 22 NYCRR §130-1.1 *et seq.*;

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<sup>1</sup> These are: (1) my June 6, 2022 affidavit ([#32](#)); (2) my June 21, 2022 affidavit ([#43](#)); (3) my June 23, 2022 affidavit ([#47](#)); (4) my June 28, 2022 affidavit ([#61](#)); and (5) my July 6, 2022 affidavit ([#67](#)).

Petitioners' September 15, 2022 Affidavit in Opposition & in Support [R.664-670]

- referrals of respondents' "misdemeanors" to criminal authorities and a determination that would afford petitioners treble damages pursuant to Judiciary Law §487;
- referrals of respondents to disciplinary and criminal authorities pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct.

5. The Court is also empowered, of its own initiative, to give notice that it is converting respondents' dismissal cross-motion to a motion for summary judgment in our favor pursuant to CPLR §3211(c). Nevertheless, our accompanying notice of motion invokes CPLR §3211(c) so as to secure our entitlement to summary judgment on the ten causes of action of our June 6, 2022 verified petition/complaint ([#1](#)) and our September 1, 2022 verified amendment thereto ([#84](#)).<sup>2</sup>

6. Our entitlement to all the foregoing relief is further established by our June 28, 2022 CPLR §2214(c) notice to respondents to furnish papers to the Court (germane to our sixth through tenth causes of action) ([#60](#)) and by our additional September 3, 2022 CPLR §2214(c) notice to respondents (germane to our first and fifth causes of action ([#85](#))). Our accompanying notice of motion therefore requests each be so-ordered. As CPLR §3124 provides us with a statutory means to compel production by motion, we have also embodied the two CPLR §2214(c) notices into a September 15, 2022 notice to respondents for discovery and inspection pursuant to CPLR §3120 ([#86](#))—and our accompanying notice of motion includes same. The CPLR §3120 notice is Exhibit D hereto ([#92](#)).

7. Finally, as to the threshold issue that I focally identified at the July 7, 2022 oral argument ([#91](#)) and which our analysis further establishes ([#88](#)), Respondent Attorney General

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<sup>2</sup> The amendment adds language to the first cause of action, pertaining to JCOPE, and to the fifth cause of action, pertaining to the Inspector General, so that they encompass, in addition to mandamus pursuant to CPLR §7803(1), the relief available pursuant to CPLR §7803(3): "whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious and/or an abuse of discretion".

Petitioners' September 15, 2022 Affidavit in Opposition & in Support [R.664-670]

James' violation of Executive Law §63.1, born of her direct financial and other personal conflicts of interest, petitioners' notice of motion now seeks her disqualification on those grounds.<sup>3</sup>

8. The Court ignored my entreaties concerning the Attorney General on July 7, 2022, stating:

"The court further finds no grounds for disqualification [of the Attorney General]. That is an extraordinary remedy. The state of New York requires the state attorney general to represent the state in all matters, and your allegation, without factual support, that disqualification is necessary would deprive the state of its statutory counsel here today." (at p. 32).

That was an untrue statement then – and even more so now – and was not responsive to what I beseeched the Court and what our order to show cause requested as "other and further relief", *to wit*:

"requiring Attorney General James, a respondent/defendant, to furnish a sworn statement that her representation of respondents/defendants, rather than petitioners/plaintiffs, is based on a determination that they have a 'merits' defense to this case, such that representing them is in the 'interest of the state', as Executive Law §63.1 requires; and (ii) that her own direct financial and other interests in the case, as in petitioners/plaintiffs' March 5, 2021 complaint against her filed with respondent/defendant Joint Commission on Public Ethics (Exhibit D to the petition/complaint), does not require that she secure independent, outside counsel to determine the 'interest of the state' pursuant to Executive Law §63.1 – and petitioners/plaintiffs' entitlement to representation".

9. This was the third and last of the particularized "other and further relief" sought by the order to show cause. The first was "disclosure by the Court of its financial and other interests in this case, giving rise to [its] actual bias..." – and the particulars of the Court's already manifested actual bias were set forth by my July 6, 2022 moving affidavit ([#67](#)) and were the very reason for the order to show cause ([#66](#)). The Court made no disclosure, instead manifesting further actual bias by its oral decision (at pp. 29-31) that, as I stated at the July 7, 2022 argument, was "conclusory and false" (at p. 33):

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<sup>3</sup> There are also conflict of interest issues pertaining to AAG Rodriguez and AAG Hamilton, including, as to the latter her undisclosed prior employment at JCOPE: "[Three Cuomo-tied hires spark JCOPE board unrest](#)" Albany Times Union, October 7, 2015; "[New state ethics panel staffer's pay tops old boss](#)" Albany Times Union, October 27, 2015.

## Petitioners' September 15, 2022 Affidavit in Opposition &amp; in Support [R.664-670]

- denying our entitlement to a TRO/preliminary injunction, established by our sixth cause of action and June 28, 2022 CPLR §2214(c) notice – notwithstanding the complete absence of any sworn statement or documentary evidence from respondents in opposition and without affording us an evidentiary hearing – which the Court justified by such fictions as “The petitioner fails to identify any legal basis why the legislature cannot now abolish the same commission it created [by statute]” and that at issue were “procedural irregularities alleged in connection with the drafting and enacting of the budget”, when the issue was enactment *via* constitutional violations and fraud, uncontested by respondents – and so obviously true from the record before the Court as to leave no doubt what the outcome of an evidentiary hearing would be;
- baldly asserting there were “no grounds” for Attorney General James’ disqualification, when the grounds, as particularized in the record, were uncontested – and I summarized them at the oral argument;
- baldly asserting that it found “no grounds or lawful authority at this time to transfer the matter to federal court” – without addressing the grounds, legal authority, or any of the particulars specified by the order to show cause, as follows:

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

10. By our instant notice of motion (#93), the Court now has an additional opportunity to make disclosure and confront the jurisdictional bar of Judiciary Law §14, arising from its interests and accounting for its manifested actual bias, mandating transfer/removal to federal court or certification of the question.

11. As for the memorandum of law that accompanies the notice of motion, I also wrote it and swear to its truth.

Petitioners' September 15, 2022 Affidavit in Opposition & in Support [R.664-670]



ELENA RUTH SASSOWER

Sworn to before me this  
15<sup>th</sup> day of September 2022



Notary Public

CHARLES B. RODMAN  
Notary Public, State of New York  
No. 4620811  
Qualified in Westchester County  
Commission Expires 12/31/2025

## Petitioners' September 15, 2022 Affidavit in Opposition &amp; in Support [R.664-670]

**TABLE OF EXHIBITS**

- Exhibit A: Petitioners' analysis of the August 18, 2022 cross-motion of Respondent Attorney General Letitia James
- Exhibit B-1: Petitioners' July 8, 2022 e-mail to Court – *cc*'ing AAG Rodriguez and AAG Hamilton
- Exhibit B-2: Petitioners' August 16, 2022 e-mail to court reporter – *cc*'ing AAG Rodriguez, AAG Hamilton, & Court, with July 11, 2022 e-mail exchange
- Exhibit C: Transcript of the July 7, 2022 oral argument of petitioners' order to show cause for a TRO/preliminary injunction
- Exhibit D: Petitioners' September 15, 2022 notice for discovery & inspection pursuant to CPLR §3120

**ANALYSIS OF THE AUGUST 18, 2022 CROSS-MOTION  
OF RESPONDENT ATTORNEY GENERAL LETITIA JAMES**

**CJA, et al. v. JCOPE, et al. -- (Albany Co. #904235-22)**

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

In this major lawsuit, with ten causes of action exposing the corruption of New York’s public protection/ethics entities, enabling and abetting the corruption of New York state governance involving an “off the constitutional rails” state budget and massive larceny of taxpayer monies, including by pay raises to New York’s state judicial, executive, and legislative constitutional officers based on “false instrument” reports, Respondent Attorney General Letitia James, a pay raise beneficiary, is representing herself and her nine co-respondents. Appearing for her, “of Counsel”, is Assistant Attorney General Gregory Rodriguez, whose August 18, 2022 cross-motion (##79-82) to dismiss the June 6, 2022 verified petition is not just frivolous, but a “fraud on the court”,<sup>1</sup> fashioned, from beginning to end, on knowingly false and misleading factual assertions, material omissions,<sup>2</sup> and on law that is inapplicable, misstated, or both.

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<sup>1</sup> “Fraud on the court” is defined by Black’s Law Dictionary (7th ed. 1999) as:

“A lawyer’s or party’s misconduct in a judicial proceeding so serious that it undermines or is intended to undermine the integrity of the proceeding.”

See, also *CDR Creances S.A.S. v Cohen, et al.*, 23 N.Y.3d 307 (2014):

“Fraud on the court involves willful conduct that is deceitful and obstructionist, which injects misrepresentations and false information into the judicial process ‘so serious that it undermines . . . the integrity of the proceeding’ (*Baba-Ali v State*, 19 NY3d 627, 634, 975 N.E.2d 475, 951 N.Y.S.2d 94 [2012] [citation and quotations omitted]). It strikes a discordant chord and threatens the integrity of the legal system as a whole, constituting ‘a wrong against the institutions set up to protect and safeguard the public’ (*Hazel-Atlas Glass Co. v. Hartford-Empire*, 322 U.S. 238, 246, 64 S. Ct. 997, 88 L. Ed. 1250, 1944 Dec. Comm’r Pat. 675 [1944]; see also *Koschak v Gates Const. Corp.*, 225 AD2d 315, 316, 639 N.Y.S.2d 10 [1<sup>st</sup> Dept 1996]) [‘The paramount concern of this Court is the preservation of the integrity of the judicial process’].”

<sup>2</sup> 60A New York Jurisprudence 2d (2001), §91 – Concealment: Generally:

“Fraud may be committed by suppression of the truth, that is, by concealment, as well as by positive falsehood or misrepresentation.<sup>fn</sup> 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.<sup>fn</sup> Thus, the suppression of material facts which a person is, in good faith, bound to disclose is evidence of and equivalent to a false representation.<sup>fn</sup>”

Such litigation fraud repeats AAG Rodriguez' comparable litigation fraud by his June 27, 2022 motion to dismiss the petition (##50-58), already demonstrated by petitioners' June 28, 2022 opposing affidavit (##61-64). It additionally follows upon the fraudulent advocacy of his colleague, Assistant Attorney General Stacey Hamilton, at the July 7, 2022 oral argument on petitioners' order to show cause for a TRO/preliminary injunction (##66-72), of which AAG Rodriguez was furnished notice and the transcript proof.<sup>3</sup> That the Court permitted this prior litigation fraud, indeed rewarded it, has plainly emboldened Attorney General James and her subordinates to do the same a third time, secure in the belief that the Court, being a pay raise beneficiary itself, will allow them to get away with everything.

The fundamental legal principle is as follows:

"when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party." Corpus Juris Secundum, Vol 31A, 166 (1996 ed., p. 339);

"It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party's falsehood or other fraud in the preparation and presentation of his cause...and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause." II John Henry Wigmore, Evidence §278 at 133 (1979).

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<sup>3</sup> These are Exhibits B and C, respectively, to petitioners' September 15, 2022 affidavit. This analysis is Exhibit A.



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 "Attorney General James and Comptroller DiNapoli  
 are Not Proper Respondents"

\* \* \*

### **AAG Rodriguez' August 18, 2022 Notice of Cross-Motion**

AAG Rodriguez' notice of cross-motion (#79) seeks dismissal of petitioners' June 6, 2022 verified petition/complaint (#1) pursuant to:

- CPLR §3211(a)(1): "a defense is founded on documentary evidence";
- CPLR §3211(a)(3): "the party asserting the cause of action has not legal capacity to sue";
- CPLR §3211(a)(7): "the pleading fails to state a cause of action"; and
- CPLR §7804(f): "an objection in point of law".

It rests on what it describes as "the annexed Affidavit of Emily Logue, Affidavit of Leslie M. Arp, and the accompanying memorandum of law." The memorandum of law (#80) identifies that it is in support of "respondents' cross-motion to dismiss the petition/complaint", but also – and in the first instance – "in opposition to petitioners' motion for preliminary injunctive relief". In so stating, AAG Rodriguez conceals that petitioners' referred-to motion – their order to show cause that the Court signed, as amended, on July 8, 2022 (#75) – "specifically" sought, if the TRO/preliminary injunctive relief was denied:

- “(a) disclosure by the Court of its financial and other interests in this case, giving rise to the actual bias demonstrated by its failure to have already granted a TRO/preliminary injunction or to have scheduled oral argument on the TRO and an evidentiary hearing on the preliminary injunction – as sought by petitioners' June 23, 2022 notice of petition – so as to render determination prior to July 8, 2022;
- (b) transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: ‘The United States shall guarantee every State in this Union a Republican Form of Government’, inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and ‘rule of necessity’ cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals;
- (c) requiring Attorney General James, a respondent/defendant, to furnish a sworn statement that her representation of respondents/defendants, rather than petitioners/plaintiffs, is based on a determination that they have a ‘merits’ defense to this case, such that representing them is in the ‘interest of the state’, as Executive Law §63.1 requires; and (ii) that her own direct

financial and other interests in the case, as in petitioners/plaintiffs' March 5, 2021 complaint against her filed with respondent/defendant Joint Commission on Public Ethics (Exhibit D to the petition/complaint), does not require that she secure independent, outside counsel to determine the 'interest of the state' pursuant to Executive Law §63.1 – and petitioners/plaintiffs' entitlement to representation". (at ¶3)

The notice of cross-motion is unsupported by any affirmation or affidavit from AAG Rodriguez or anyone else identifying the legal authority pursuant to which Attorney General James is representing respondents or that such representation is based on a determination that it is in the "interest of the state", as Executive Law §63.1 mandates, and that Attorney General James' financial and other conflicts of interest do not require designation of outside counsel.

Nor does AAG Rodriguez support his cross-motion with an affirmation or affidavit attesting to the truth and accuracy of such factual assertions as he makes in his accompanying memorandum of law<sup>4</sup> – therefore unsworn, just as the assertions made by AAG Hamilton at the July 7, 2022 oral argument of the TRO/preliminary injunction (#91).

### **The Affidavit of Emily Logue and Affirmation of Leslie Arp**

Neither the [affidavit of Emily Logue \(#81\)](#), who identifies herself as Director of Investigations and Enforcement at JCOPE – and now CELG – nor the [affirmation of Leslie Arp \(#82\)](#), who identifies herself as Chief of the Case Management Unit in the Office of the Inspector General (OIG), are sufficient for any purpose, other than for perjury prosecutions of Ms. Logue and Ms. Arp<sup>5</sup> and as reinforcement of petitioners' entitlement to summary judgment on their verified petition.

Common to both sworn statements is that they outrightly lie about petitioners' complaints and make assertions as to policy and procedure for which they furnish no documentary support – because they are false.

Thus, according to Ms. Logue (¶15), petitioners' seven complaints to JCOPE – Exhibits [A](#), [B](#), [C](#), [D](#), [E](#), [F](#), [G](#) to the petition – only made "broad, nonspecific claims that the POL was violated...contain only conclusory, aggregate assertions against multiple public officers without alleging how each individually purportedly engaged in actions that amount to a personal conflict of interest proscribed under POL 74. Information tending to establish a violation of the POL, by specific individuals subject to the POL, is entirely absent from Petitioners' complaints to JCOPE."

Although Ms. Logue concedes (at ¶7) that JCOPE was required to send out 15-day letters under its Executive Law §94.13(a), she purports that because petitioners' complaints were so deficient

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<sup>4</sup> "Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.", 22 NYCRR §202.8(c) – "Motion procedure".

<sup>5</sup> "False swearing in either an affidavit or CPLR 2106 affirmation constitutes perjury under Chapter 210 of the Penal Law", §205 "Affidavits": New York Practice, David Siegel (5<sup>th</sup> ed. 1999); "Those who make affidavits are held to a strict accountability for the truth and accuracy of their contents.", 2 Carmody Wait 2d §4:12, citing "*In re Portnow*, 253 AD 395, 398 (2<sup>nd</sup> Dept. 1938).

none could be sent, or even formulated, as “the facts alleged [did] not, under the law, constitute violations of the POL” (§16) and “even if taken as established – would not support a violation of law within JCOPE’s power to enforce” (§17).

Ms. Arp’s perjury is even more extreme, as she does not even acknowledge that petitioners filed a complaint with OIG, except in her last paragraph (§12) almost as a post-script. According to Ms. Arp, petitioners’ November 2, 2021 letter – [Exhibit I \(eye\) to the petition \(#17\)](#) – was “difficult to decipher in that it did not provide any basis to support its conclusory allegations and overall offered inaccurate statements”, and, therefore, pursuant to OIG policy and Executive Law Article 4-A, it was within OIG’s “discretion” for “no action” to be taken with respect thereto (§§7-12)<sup>6</sup>

These characterizations of petitioners’ complaints – by which Ms. Logue and Ms. Arp justify the inaction of JCOPE and OIG – are frauds immediately verifiable from the face of the complaints, each fact-packed and furnishing, *via* hyperlinks, a mountain of *prima facie*, open-and-shut evidence of particularized corrupt and larcenous conduct by specified public officers, motivated by financial, political, and personal interests – mandating investigation and rendering any “discretion” a flagrant abuse and breach of duties.

Equally egregious – and perjurious – is Ms. Arp’s assertion (§10) that petitioners’ May 16, 2022 letter to IG Lang “incorrectly accused OIG staff of violating office policy”. There is nothing incorrect about that letter – [Exhibit K to the petition \(#19\)](#) – and its recital of OIG’s violations, substantiated by documentary evidence that Ms. Arp has withheld, focuses on the same “Case Management Policy: 0101” that she attaches as Exhibit A to her affirmation on the bald pretense that it was adhered to. All the particulars of the May 16, 2022 letter — plainly within Ms. Arp’s knowledge to be disputed or contested, if she could – are un rebutted by her, as are the allegations of petitioners’ fifth cause of action (§§59-77), entitling them to its relief, including a declaration that the provision of “Case Management Policy: 0101” allowing the IG to take “no action” on complaints involving “covered agencies” is “overbroad” and a clear violation of Executive Law §53.1 (§73).

Finally, Ms. Logue assists AAG Rodriguez in raising a bogus standing defense by her affidavit’s §§7-8 purporting that the purpose of 15-day letters is solely to provide due process for the complained-against party – in other words, petitioners are not within its “zone of interest”. This, too, is perjury – and so-revealed by [19 NYCRR Part 941 et seq.](#), which Ms. Logue identifies that JCOPE adopted on an emergency basis on January 25, 2022 and made permanent on June 28, 2022 (at §§21, 23). Clear from its §941.3(a)(1)(i) is that due process to the complained-against is NOT its exclusive “zone of interest”, as it states:

“While any response submitted [to a 15-day letter] will be reviewed by the Commission, the Commission is not precluded from voting to commence a

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<sup>6</sup> To accommodate the deceit of “discretion”, petitioners have filed a September 1, 2022 verified amendment to their verified petition ([#84](#)) so as to expressly embrace as to both JCOPE and OIG declarations pursuant to CPLR §7803.3 that their handling of petitioners’ complaints was in “violation of lawful procedure, affected by error of law, arbitrary, capricious, and/or an abuse of discretion”.

substantial basis investigation prior to receiving a Respondent's written response." (underlining added).

To further demonstrate the perjury of Ms. Logue's affidavit and Ms. Arp's affirmation, petitioners have filed a September 3, 2022 notice to respondents to furnish records to the Court pursuant to CPLR §2214(c) ([#85](#)).

### **AAG Rodriguez' Memorandum of Law**

#### **AAG Rodriguez' Introductory Paragraph (at p. 1)**

As with his notice of cross-motion, AAG Rodriguez does not purport that his [memorandum of law \(#80\)](#) responds to anything other than petitioners' requested preliminary injunctive relief and their verified petition. In other words, not the "other and further relief" identified by their order to show cause (¶3) the Court signed on July 7-8, 2022, above-quoted, pertaining to:

- (1) disclosure by the Court of its financial interests and other relationships, accounting for its already manifested actual bias;
- (2) transfer/removal to federal court, as all state judges are divested of jurisdiction pursuant to Judiciary Law §14 by reason of their financial and other interests;
- (3) Attorney General James' "interest of the state" duty pursuant to Executive Law §63.1 and her disqualification for financial and other interests.

Nor does his memorandum of law purport to respond to the June 23, 2022 notice of petition ([#46](#)), which also contained, as "other and further relief", removal/transfer to federal court and Attorney General James' Executive Law §63.1 mandate and disqualification for interest (at ¶14).

#### **AAG Rodriguez Preliminary Statement (at pp. 1-3)**

AAG Rodriguez' first paragraph (at p. 1), by its very first sentence, conceals that this "hybrid" lawsuit is additionally a "State Finance Law Article 7-A citizen-taxpayer action" – a fact the petition repeatedly identifies, starting at its ¶1. His first paragraph also mischaracterizes the mandamus petitioners seek as to JCOPE's annual reports, which is not limited to 2021 and 2022, and as to LEC's annual reports, which is not limited to issuance for 2020 and 2021 – facts verifiable from the petition's second and fourth causes of action (¶¶42-47, 54-58) and its "Prayer for Relief" (at p. 48).

As for AAG Rodriguez' second paragraph (at p. 2) pertaining to petitioners' order to show cause, signed by the Court, as amended, on July 8, 2022, he cites to and quotes from only the first two of its three branches, entirely omitting the above-quoted third branch of "other and further relief".

AAG Rodriguez' remaining paragraphs then summarize his argument (at pp. 2-3), the deceit and fraudulence of which is below particularized.

**AAG Rodriguez' Argument (at pp. 3-26)**

Completely absent from AAG Rodriguez' 23-page argument is any identification of the controlling standard governing CPLR §3211(a)(7) dismissal motions for failure to state a cause of action – reflective of his knowledge that he has flagrantly flouted it. As stated by the Court of Appeals in *Leon v. Martinez*, 84 NY2d 83, 87-88 (1994) – and routinely repeated in Third Department decisions<sup>7</sup>:

“We accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory”.

Such “facts as alleged in the complaint” are ALL alleged facts. As the Third Department stated in *Haire v. Bonelli*, 57 A.D.3d 1354, 1355 (2008):

“When courts consider a motion under CPLR 3211, pleadings are afforded a liberal construction, with all alleged facts accepted as true” (underlining added), citing *Leon v Martinez*.

The Court of Appeals termed this “the well known principle”, stating, in *Barr v. Wackman*, 36 N.Y.2d 371, 375 (1975):

“We note at the outset the well known principle that on a motion to dismiss for failure to state a cause of action every fact alleged must be assumed to be true and the complaint liberally construed in plaintiff's favor (see, e.g., *Sage v Culver*, 147 NY 241, 245 [1895])” (underlining added).

It was, therefore, frivolous for AAG Rodriguez to cross-move to dismiss the petition for failure to state a cause of action unless he could identify ALL the accepted-as-true allegations which, taken together, failed to state a cause of action.

However, because respondents have no defenses to the allegations of petitioners' ten causes of action – thereby establishing defendant Attorney General James' duty, pursuant to Executive Law §63.1, to be representing petitioners – AAG Rodriguez conceals virtually ALL the allegations and certainly ALL the material allegations and their substantiating particulars.

Similarly, he omits any discussion of – and caselaw for – what constitutes “documentary evidence” for purposes of dismissal pursuant to CPLR §3211(a)(1). Indeed, AAG Rodriguez does not even identify, other than inferentially, the “documentary evidence” on which he is relying. Here, too, such bespeaks his knowledge that in actuality he has no “documentary evidence” rebutting the particularized allegations of the petition and the causes of action based thereon.

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<sup>7</sup> As illustrative, *Matter of Tammy TT v. Charles TT*, 204 A.D.3d 1336, 1337 (3<sup>rd</sup> Dept. 2022); *Matter of Munoz v. Annucci*, 195 A.D.3d 1257, 1263 (3<sup>rd</sup> Dept. 2021); *Gagnon v. Village of Cooperstown, NY*, 189 A.D.3d 1724, 1725 (3<sup>rd</sup> Dept. 2020); *Laker v. Association of Prop. Owners of Sleepy Hollow Lake, Inc.*, 172 A.D.3d 1660, 1662 (3<sup>rd</sup> Dept. 2019); *Loch Sheldrake Beach & Tennis Inc. v. Akulich*, 141 A.D.3d 809, 814 (3<sup>rd</sup> Dept. 2016).

Thus, for example, neither Ms. Logue's affidavit nor Ms. Arp's affirmation qualify as "documentary evidence", as "an affidavit cannot constitute 'documentary evidence' because its content can be controverted by other evidence – such as another affidavit." McKinney's Consolidated Laws of NY Annotated, 7B, C:3211:10 "Defense Based on Documentary Evidence" (2016); New York Practice, Siegel/Patrick Connors (6<sup>th</sup> ed. 2018), §259 "affidavits...can't be made the basis of a paragraph 1 motion".

Then, too, AAG Rodriguez conceals that because this is a declaratory judgment and citizen-taxpayer action, the pertinent causes of action of the petition cannot be "dismissed" – as his notice of cross-motion simplistically requests and his memorandum repeats. Rather, the situation is more complex. As stated in New York Practice, Siegel/Connors (6<sup>th</sup> ed. 2018) §440 :

"If a plaintiff in an ordinary action fails to establish entitlement to relief, the result is a dismissal of the complaint. In a declaratory action, 'the court should make a declaration, even though the plaintiff is not entitled to the declaration he seeks'.<sup>fn1</sup> A mere dismissal is not appropriate.<sup>fn2</sup> The court must determine the rights of the parties to the dispute involved and, if the defendant prevails, the declaration should simply go the defendant's way.<sup>fn3</sup>

If the defendant should move to 'dismiss' the complaint in a declaratory judgment action for failure to state a cause of action under CPLR 3211(a)(7), it will only present for consideration the issue of whether a cause of action for declaratory relief is set forth and not the question of whether the plaintiff is entitled to a favorable declaration.<sup>fn4</sup> Therefore, a motion to dismiss a cause of action for declaratory judgment should be denied if the pleading 'is sufficient to invoke the court's power to render a declaratory judgment...as to the rights and other legal relations of the parties in a justiciable controversy.'<sup>fn5</sup> If, however, there are no questions of fact, the motion should be treated as one seeking a declaration in defendant's favor and treated accordingly.

As is true in any judgment in any action, the court can shape its judgment in a declaratory action to suit the needs of the occasion.<sup>fn.6</sup> If the court declines to render a declaration altogether, it must state its grounds.<sup>fn7</sup>

It will be recalled that the declaration need not be sought alone but can be joined with any other relief the plaintiff is entitled to, legal or equitable.<sup>fn8</sup> If the proof sustains a right to such other relief, the judgment should include it along with the declaration."

In lieu of presentation of such fundamental law and principles – exposing the frivolousness and fraud of his cross-motion – AAG Rodriguez presents an argument consisting of two points, whose very structuring is a deceit.

Thus, his Point I (at p. 3) entitled "Petitioners' Motion for a Preliminary Injunction Should be Denied" spans 23 pages (pp. 3-26) to the end of his memorandum, except for its final three sentences under two headings, as follows (at p. 26):



## "POINT II

## Respondents' Cross-Motion to Dismiss the Petition Should Be Granted

For the reasons that Petitioners cannot ultimately establish that they are likely to succeed on the merits of their claims, the Petition fails to state a cause of action. Accordingly, Respondents' cross-motion to dismiss the Petition should be granted in its entirety with prejudice.

## CONCLUSION

For the above reasons, Petitioners' motion for a preliminary injunction should be denied, and Respondents' cross-motion should be granted in its entirety with prejudice."

In other words, AAG Rodriguez' Point II for dismissal of the petition's ten causes of action rests on his Point I pertaining to the preliminary injunction. Yet, petitioners' order to show cause for a preliminary injunction related not to their ten causes of action, but only to the "ethics commission reform act of 2022" – the subject of their sixth cause of action (§§78-85).

As stated by petitioners' July 6, 2022 affidavit in support of their order to show cause ([#67](#)):

"3. Petitioners' request for a TRO and/or preliminary injunction... rests on our summary judgment entitlement to the granting of our verified petition's sixth cause of action (#1, at §§78-85), which, additionally, is the third branch of our June 23<sup>rd</sup> notice of petition:

'declaring unconstitutional, unlawful, and void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022' – enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw....'".

Consequently, AAG Rodriguez' Point I pertaining to the preliminary injunction should have been confined to the sixth cause of action, with possible inclusions from the seventh. However, because he has no defense to it, he piles into his Point I-A "Petitioners Fail to Demonstrate a Likelihood of Success on the Merits" (pp. 4-24) the other nine causes of action, asserting as to them – and the sixth cause of action which he effectively buries (at pp. 22) – such frauds and deceptions as he believes will serve for dismissal of each.

Before doing so, his prefatory Point I (at p. 3) states:

"As an initial matter, Petitioners' request for a preliminary injunction is improper 'because it would upset, rather than maintain, the status quo and would effectively grant the ultimate relief sought.' *Moltisanti v East Riv. Hous. Corp.*, 149 A.D.3d 530, 531 (1<sup>st</sup> Dept. 2017)."



AAG Rodriguez does not reveal that it was the Court's July 7, 2022 denial of the TRO that resulted, the next day, in changing "the status quo" that petitioners sought to maintain by their order to show. Indeed, he essentially conceals the denial of the TRO, stowing it in a footnote (fn.1) and without elaboration as to the basis for the Court's denying same (Ex. C, pp. 29-31).

He then argues mootness in his Point I-B.2 "Balancing of the Equities" (at p. 25) ("Petitioners' demanded relief of staying ECRA from taking effect on July 8, 2022 is now moot, [] with JCOPE having been abolished") – and quotes, in his Point I-B.1 "Irreparable Harm" (at pp. 24-25), petitioners' assertion that their first two causes of action for mandamus against JCOPE would be moot, absent an injunction prior to July 8, 2022 – which is what he also asserts in his Point I-A (at pp. 9, 13-14).

That AAG Rodriguez argues as if granting a TRO/preliminary injunction is possible is because, in fact, it is – as reflected by the sole case he cites in his Point I-B.2 (at p. 25): *21 Tech LLC v. GCOM Software LLC*, 2022 N.Y. Misc. LEXIS 728 (Sup. Ct. Albany Cty. Feb 24, 2022) (Platkin, J.)", where, referring to the burden on the party seeking an injunction, Judge Platkin states (at pp. 5-6):

"The burden is even higher for a party seeking a mandatory preliminary injunction — one that alters the status quo by compelling an affirmative act or that provides the movant with substantially all of the ultimate relief that it seeks in the litigation". (underlining added).

In any event, clear from the record is petitioners' belief that after July 7, 2022 their TRO/preliminary injunction would not be obtainable<sup>8</sup> – but their entitlement to summary judgment would be. And encapsulating this, petitioner Sassower's parting words to the Court, on July 7, 2022:

"You have no evidence on which to deny the TRO. We'll be back with the granting of the sixth cause of action to which [respondents] have no defense, summary judgment on every cause of action." (Tr. 37).

Below is petitioners' rebuttal to the nine numbered sections of AAG Rodriguez' Point I-A (at pp. 4-24), in substantiation of their summary judgment entitlement as to "every cause of action".

**AAG Rodriguez' #1 (at p. 4)**

**"All Claims Brought by Center for Judicial Accountability, Inc. ('CJA')  
Must be Dismissed"**

AAG Rodriguez here conceals that petitioners are expressly acting "on behalf of the People of the State of New York and the public interest" and that they have raised, as a threshold issue, their entitlement to the Attorney General's representation, pursuant to Executive Law §63.1, because they – not respondents – are upholding the "interest of the state" – and that this is proven by the Attorney General's litigation fraud, in the absence of any legitimate defense.

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<sup>8</sup> See petitioners' June 28, 2022 affidavit ([#61](#) at ¶13); petitioners' July 6, 2022 affidavit ([#67](#) at ¶¶12-13); transcript of July 7, 2022 oral argument (#91, at pp. 4, 25-27, 37).

It may also be presumed that the reason AAG Rodriguez conceals, at his page 1, that this “hybrid” lawsuit is also a citizen-taxpayer action is because State Finance Law Article 7-A expressly contemplates that the Attorney General will involve himself as plaintiff or on behalf of plaintiffs to ensure merits determination of wrongful, illegal and unconstitutional expenditures of taxpayer monies (State Finance Law §123-A, §123-C, §123-D, §123-E).<sup>9</sup>

As “any claims alleged in the Petition on behalf of Petitioner CJA” are also alleged by petitioner Sassower, they continue through her, making dismissal of CJA’s claims “of little practical consequence”. *Cf., Cass v. New York*, 88 AD2d 305, 308 (3<sup>rd</sup> Dept. 1982), dismissal of action against the state as being “a result of little practical consequence since the two State officers [Comptroller and Chief Administrator of the Courts] remain as parties defendants.”

**AAG Rodriguez’ #2 (at pp. 4-8)**  
**“Petitioners Lack Standing”**

AAG Rodriguez here relies on inapplicable and misleading caselaw and factual falsehood in seeking dismissal for lack of standing, which not until his last sentence (at p. 8) does he identify as pursuant to CPLR §3211(a)(3).

With respect to petitioners’ five mandamus causes of action, AAG Rodriguez purports that petitioners are without standing because they have not suffered injury distinct from that of the general public and that they do not “fall within the zone of interests or concerns sought to be promoted or protected by the statutory provision under which the agent has acted”. This is false, as AAG Rodriguez would reasonably know, including from the December 18, 2018 decision in Cox v. JCOPE, cited and linked by petitioners’ first cause of action (at ¶41). In that decision, Albany Supreme Court rejected JCOPE’s attempt to invoke a defense of standing, stating (at p. 5):

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

As stated more than 40 years before by the Fourth Department in Albert Ella Bldg. Co. v. New York State Urban Dev. Corp., 54 A.D.2d 337, 342 (1976):

<sup>9</sup> AAG Rodriguez’ June 27, 2022 dismissal motion had also concealed that petitioners’ lawsuit is a citizen-taxpayer action – a fact pointed out by petitioners’ June 28, 2022 opposing affidavit ([#61](#) at ¶3).

“As a general rule, where a citizen, in common with all other citizens, is interested in having some act of a general public nature done, devolving as a duty upon a public body or officer refusing to perform it, the performance of such act may be compelled by a proceeding brought by such citizen against a body or officer. This is especially so where the matter involved is one of great public interest, and granting the relief requested would benefit the general public (24 Carmody-Wait 2d, N Y Civ Prac, §145.255). The office which the citizen performs is merely one of instituting a proceeding for the general benefit, the only interest necessary is that of the people at large (*People ex rel. Stephens v Halsey*, [37 N.Y. 344](#); 24 Carmody-Wait 2d, N Y Civ Prac, §145.255). Any citizen may maintain a mandamus proceeding to compel a public officer to do his duty (*Matter of Cash v Bates*, [301 N.Y. 258](#); *Matter of Andresen v Rice*, [277 N.Y. 271](#); *Matter of McCabe v Voorhis*, [243 N.Y. 401](#); *Matter of Yerry v Goodsell*, [4 A.D.2d 395, 403](#) affd [4 N.Y.2d 999](#)). ... Standing has been granted absent personal aggrievement where the matter is one of general public interest (8 Weinstein-Korn-Miller, N Y Civ Prac, par 7802.01, n 2).”

Having concealed this principle, dispositive that personal injury and zone of interest are non-issues, AAG Rodriguez purports (at p. 5):

In *Sassower v. Comm'n on Judicial Conduct of N.Y.*, 289 A.D.2d 119 (1st Dept. 2001), Petitioner Sassower brought an Article 78 proceeding seeking to compel the Commission on Judicial Conduct to investigate her complaint of judicial misconduct. *Id.* at 119. The First Department held that ‘inasmuch as petitioner has failed to demonstrate that she personally suffered some actual or threatened injury as a result of the putatively illegal conduct, she lacks standing to sue the Commission.’ *Id.* Similarly here, Petitioners cannot show that they suffered actual injury as a result of JCOPE’s alleged wrongful conduct. See *Matter of Thomas v. N.Y.C. Dep’t of Educ.*, 137 A.D.3d 642, 643 (1st Dept. 2016). Moreover, Petitioners do not ‘fall within the zone of interests . . . sought to be promoted or protected’ by Executive Law §94.13(a). See *id.* The former version of Executive Law §94.13(a), in place during JCOPE’s tenure, was designed to protect the subject of a complaint filed with JCOPE so that he/she has notice of the alleged violations and is able to prepare a defense against the alleged violations. See Affidavit of Emily Logue (‘Logue Affd.’), ¶¶7, 8. Therefore, Petitioners’ first cause of action should be dismissed pursuant to CPLR 3211(a)(3) for lack of standing.” (hyperlinking added).

Apart from the fraudulence of the *Sassower v. Commission on Judicial Conduct* decision,<sup>10</sup> the decision in *Cox v. JCOPE* establishes – in the relevant context of JCOPE, not some other entity –

<sup>10</sup> The fraudulence of the decision is in the record by, *inter alia*, petitioners’ June 27, 2013 complaint to JCOPE – [Exhibit G to the petition](#), which rests on [CJA’s October 27, 2011 opposition report to the Commission on Judicial Compensation’s August 29, 2011 report](#). A substantiating free-standing exhibit to the opposition report is the [last motion at the Court of Appeals in \*Sassower v. Commission on Judicial Conduct\*](#), detailing the fraudulence of the First Department’s six-sentence decision by an [annexed analysis](#), including the completely conclusory third sentence as to standing (at pp. 15-16) on which AAG Rodriguez

that “actual injury” is not requisite to mandamus where the matter is one of general public interest – and that ‘the overall purpose and spirit of Executive Law 94...is to strengthen the public’s trust and confidence in government,’ ([Matter of O’Connor v. Ginsberg](#), 106 AD3d 1207, 1211 (3d Dept. 2013)), in other words, complainants, such as the petitioners herein, “fall within the zone of interests . . . sought to be promoted or protected’ by Executive Law §94.13(a)”.

Tellingly, Ms. Logue’s perjurious affidavit, on which AAG Rodriguez here relies, does not cite any decisional law – and plainly her interpretation (at ¶¶7, 8) that 15-day letters are strictly a due process protection for the complained-against is contrary to *Cox v. JCOPE*, which is a judicial determination of the public’s “zone of interest”, not appealed-from or reargued by JCOPE.

Although AAG Rodriguez has no comparable sworn statements with respect to the statutory provisions whose violation is challenged by petitioners’ other four mandamus causes of action, this does not restrain him from baldly invoking a defense of standing based on “zone of interest” as to these (at p. 6):

“Similarly, Petitioners lack standing to assert a claim for mandamus in the second, third, fourth and fifth causes of action as they fail to demonstrate that they suffered some actual or threatened injury from the misconduct alleged in those claims. Petitioners also do not ‘fall within the zone of interests sought to be promoted or protected’ by: Executive Law §94.9(1)(i) (Annual Reports by JCOPE [second cause of action]); Legislative Law §80.1 and §80.4 (concerning the functions, powers and duties of the Legislative Ethics Commission [third cause of action]); Legislative Law §80.7(1) (annual reports of Legislative Ethics Commission [fourth cause of action]); and Executive Law Article 4-A and §53 (duties of Inspector General [fifth cause of action]).”

Such pretense that the above statutory provisions are not intended for the public’s benefit and that the public is not within their “zone of interest” is brazen falsehood – and AAG Rodriguez’ absence of legislative history and caselaw for any of them makes that further manifest.

AAG Rodriguez then shifts to stripping petitioners of citizen-taxpayer standing under State Finance Law Article 7-A, asserting that “Petitioners also fail to establish taxpayer standing” (at pp. 6-7):

“Petitioners’ State Finance Law §123-b claim fails because they challenge broad policy decisions by the Legislature rather than a specific unlawful expenditure. In the sixth, seventh, eighth, ninth and tenth causes of action of the Petition, Petitioners challenge the entire FY 2022-23 state budget and separate budget bills by repeatedly alleging conclusory claims of ‘fraud and larceny’ and that the budget was enacted in ‘flagrant violation of mandatory safeguarding provisions of the New York State Constitution.’ However, their claims fail to demonstrate a ‘wrongful expenditure, misappropriation, misapplication, or any

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relies.

other illegal or unconstitutional disbursement of state funds or state property' within the ambit of State Finance Law §123-b(1)."

This is utterly false and rests on material concealment:

- Petitioners' eighth cause of action (§§91-96), with the word "Larcenous" in its title, identifies "specific unlawful expenditure" at §§93-94 and is, therefore, within the purview of State Finance Law §123-b and §123-e. Moreover, and as identified at §96, to which AAG Rodriguez makes no reference, the requested declaration "is obtainable by CPLR §3001,...if not additionally by the certiorari relief CPLR Article 78 provides";
- Petitioner's ninth cause of action (§§97-105), with the word "Larcenous" in its title, identifies "specific unlawful expenditure" at §§101-102 and is, therefore, within the purview of State Finance Law §123-b and §123-e. Moreover, and as identified at §105, to which AAG Rodriguez makes no reference, the requested declaration is also "obtainable by CPLR §3001,...if not additionally by the certiorari relief CPLR Article 78 provides";
- Petitioners' seventh cause of action (§§86-90) identifies, at §87(5), that the Senate and Assembly one-house budget resolutions each retained "all the larcenies" specified by petitioner Sassower's January 22, 2022 written statement in support of oral testimony ([Exhibit A-2](#)) and January 25, 2022 written oral testimony ([Exhibit A-3](#)) – both of which it linked – and are, therefore, within the purview of State Finance Law §123-b and §123-e. So, too, the balance, which are not challenges to "broad policy decisions", but to the unconstitutionality and unlawfulness of the budget's enactment – and the requested declaration thereof is, as identified by §90, to which AAG Rodriguez makes no reference, also "obtainable by CPLR §3001,...if not additionally by the certiorari relief Article 78 provides";
- Petitioners' sixth cause of action (§§78-85) does not challenge "broad policy decisions", but the unconstitutionality and unlawfulness of enactment, *via* the budget, of the "ethics commission reform act of 2022" – and the requested declaration is, as stated by §90 – to which AAG Rodriguez makes no reference – also "obtainable by CPLR §3001,...if not additionally by the certiorari relief that Article 78 provides";
- Petitioners' tenth cause of action (§§106-114) does not seek relief pursuant to the citizen-taxpayer statute, but, as stated by §114, "pursuant to CPLR §3001" for a declaration that Public Officers Law §108.2(b) is unconstitutional, *as written and as applied*, by its violation of Article III, §10 of the NYS Constitution.

AAG Rodriguez also purports (at pp. 7-8):

"Petitioners lack standing to bring any claims relating to the Legislature's alleged violations of its own rules and procedures because they cannot allege an



injury ‘distinct from that suffered by the public at large.’ [Urban Justice Center v. Silver](#), 66 A.D.3d 567, 567 (1st Dept. 2009). Petitioners also lack standing to compel the Temporary Senate President and Assembly Speaker to appoint a ninth member to the legislative ethics commission since they fail to demonstrate that they personally suffered some actual or threatened injury as a result of the putatively illegal conduct. Therefore, the Third Cause of Action should be dismissed.” (hyperlink added).

As to the first sentence, AAG Rodriguez does not identify which of petitioners’ causes of action involve the Legislature’s violations of its own rules and procedures. These are petitioners’ sixth, seventh, eighth, and ninth causes of action pertaining to the budget, as to which the citizen-taxpayer statute does NOT require “an injury distinct from that suffered by the public at large”, as AAG Rodriguez previously concedes (at pp. 6-7). Nor is *Urban Justice Center* applicable, as the plaintiffs there were challenging legislative rules, unlike at bar where petitioners seek enforcement of legislative rules.

As for the second sentence pertaining to the mandamus sought by petitioners’ third cause of action (¶¶48-53) – not identified by AAG Rodriguez until his third sentence – the public is plainly within the “zone of interest” intended by Legislative Law §80.1 and §80.4 in requiring that LEC’s majority be non-legislators, which is why he makes no argument and furnishes no decisional law on the subject.

**AAG Rodriguez’ #3 (at pp. 8-15)**  
**“Petitioners are Not Entitled to Mandamus Relief”**

AAG Rodriguez’s first prefatory paragraph repeats his misidentification (at p. 1) that the second cause of action (¶¶42-47) seeks mandamus only with respect to JCOPE’s 2021 and 2022 annual reports and his mischaracterization (at p. 2) that the fourth cause of action (¶¶54-58) seeks mandamus only with respect to issuance of LEC’s 2020 and 2021 annual reports.

He follows his unexceptional second prefatory paragraph as to the legal standard for mandamus by three subsections for four of the mandamus causes of action. The missing cause of action is the third – reflective of AAG Rodriguez’ inability to craft any argument apart from standing, appended as the last sentence of his above Section #2.

**AAG Rodriguez’ “a. First Cause of Action” (at pp. 9-13)**

AAG Rodriguez begins by asserting (at p. 9) that JCOPE’s replacement by CELG on July 8, 2022 pursuant to the “ethics commission reform act of 2022” has “mooted” petitioners’ mandamus claim against JCOPE, as it no longer exists. This was petitioners’ argument from the outset of the lawsuit on June 6, 2022 in seeking a TRO and preliminary injunction<sup>11</sup> – modified thereafter by their recognition that upon the granting of petitioners’ sixth cause of action, declaring the “ethics

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<sup>11</sup> Petitioners’ June 6, 2022 affidavit ([#32](#) at ¶5); petitioners’ June 21, 2022 affidavit ([#43](#) at ¶¶4, 7(d), (e)); petitioners’ June 23, 2022 affidavit ([#47](#) at ¶¶3, 6).

commission reform act of 2022” as having been unconstitutionally and unlawfully enacted, mandamus would once again be in play against a restored JCOPE.<sup>12</sup>

AAG Rodriguez’ cross-motion now proves that petitioners were correct in arguing, in support of their TRO/preliminary injunction, that respondents had NO defense to the sixth cause of action, here demonstrated at pp. 23-26, *infra*.

**Under the subsection heading: “i. Petitioners Do Not Have a Clear Legal Right to Relief” (at pp. 9-12),** AAG Rodriguez relies upon the perjuries and manipulations of Ms. Logue’s affidavit, which would have been obvious to AAG Rodriguez – because they are obvious.

As hereinabove recited (at pp. 5-7, *supra*), Ms. Logue contends that petitioners’ complaints were so defective that notwithstanding JCOPE’s Executive Law §94.13(a) required sending out 15-day letters, issuing them was an impossibility. Although this flagrant perjury is verifiable from even a superficial glance at the complaints, AAG Rodriguez not only adopts it, but adds to it. Thus, he purports (at pp. 11, 12):

“Petitioners seek mandamus to compel JCOPE to send 15-day letters to every individual who was the subject of seven prior complaints they made to JCOPE...

...Petitioners do not have a clear legal right to demand that 15-day letters be issued...in some instances over 200 unnamed members of the New York State Legislature, all members of multiple legislative committees, all members of the Commission on Judicial Conduct, and all statewide elected officials...

... Petitioners’ arguments to the contrary would require JCOPE to routinely notify each individual that is named in a complaint made to JCOPE by any member

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<sup>12</sup> As stated at ¶16 of petitioners’ June 28, 2022 affidavit in opposition to AAG Rodriguez’ June 27, 2022 dismissal motion ([#61](#)):

“petitioners’ two mandamus causes of action against JCOPE will NOT, in fact, be mooted by the “ethics commission reform act of 2022” taking effect on July 8<sup>th</sup>. The reason is the petition’s sixth cause of action (¶¶78-85) – the first of the petition’s five causes of action for declaratory relief – for an order:

‘declaring unconstitutional, unlawful, and void Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the ‘ethics commission reform act of 2022’ – enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw’.

As such declaration is a matter of open-and-shut, *prima facie*, documentary evidence – so-stated by the petition, obvious from its content, and reiterated by all three of my prior affidavits – the current Executive Law §94 and JCOPE, which the ‘ethics commission reform act of 2022’ repeals, will, in the absence of an injunction before July 8<sup>th</sup>, be re-instated after, *as a matter of law*, by ANY fair and impartial tribunal – and, with it, petitioners’ entitlement to mandamus against JCOPE based on that Executive Law §94 – the subject of their first and second causes of action (¶¶27-41; ¶¶42-47).” (capitalization and italics in the original).

of the public merely claiming, in conclusory words, a violation of the Public Officers Law without anything more. That interpretation would lead to absurd results.” (underlining added).

This is utterly false. Neither the petition nor the underlying complaints made any demand as to the number of 15-day letters JCOPE would send out as to each complaint. Each complaint, however, identified by name the specific, most-directly-involved, and highest individuals – as substantiated by *prima facie* evidence that each complaint supplied to establish the Public Officers Law §74 violations alleged.

**Under the subsection heading “ii. Petitioners’ Claims About the 15-Day Letters Are Untimely” (at pp. 12-13),** AAG Rodriguez purports that petitioners are barred by “statute of limitations and the doctrine of laches” from seeking mandamus as to their June 27, 2013 complaint, their December 11, 2014 complaint, their August 30, 2021 complaint, and their March 5, 2021 complaint. According to him, “Petitioners failed to make a timely demand” with respect to these complaints. This is untrue – and the complaints and the petition reflect petitioners repeated inquiries, always unresponded-to, as to why these complaints had not been determined. In any event, no “statute of limitations” and “laches” attaches to the last of petitioners’ complaints – their April 13, 2022 complaint (#2) – and “petitioners’ claims about the 15-day letters” are preserved through it.

**AAG Rodriguez’ “b. Second and Fourth Causes of Action” (at pp. 13-14)**

AAG Rodriguez falsely purports that at issue with respect to petitioners’ second cause of action (§§42-47) are only JCOPE’s 2021 and 2022 annual reports. This is untrue. The second cause of action seeks mandamus with respect to ALL of JCOPE’s annual reports, spanning from the first in 2012.

As for AAG Rodriguez’ pretense that “Since JCOPE ceased to exist as of July 8, 2022, it could not have issued an ‘annual’ report for 2022”, this also is untrue. Nothing prevented JCOPE from issuing a report pertaining to the more than six months of 2022 in which it was in existence – and petitioners’ ¶47 so-asserted this.

AAG Rodriguez is similarly deceitful (at p. 14) as to petitioners’ fourth cause of action (§§54-58), purporting that it pertains only LEC’s 2021 and 2022 annual reports. This, too, is untrue. The fourth cause of action seeks mandamus compelling LEC’s compliance with “the mandatory requirements of Legislative Law §80.7(1)”. This involves more than the simple issuance of annual reports, which is all that has been furnished by the now-issued 2021 and 2022 reports – the only annual reports posted on LEC’s website, at the link AAG Rodriguez furnished: <https://legethics.ny.gov/public-documents>.



**AAG Rodriguez' "c. Fifth Cause of Action" (at pp. 14-15)**

AAG Rodriguez here relies on Ms. Arp's affirmation, whose perjury hereinabove recited (at pp. 5-7, *supra*) is verifiable from the allegations of the petition's fifth cause of action (§§59-77) and elsewhere pertaining to the Office of Inspector General (§§8, 16, 21-24). Ms. Arp's affirmation neither refers to, nor contests, the accuracy of the petition's allegations. As for her one and only exhibit – OIG's "Case Management Policy: 0101" – it substantiates the fifth cause of action, which is why the fifth cause of action and petitioners' May 16, 2022 letter ([#19](#)) are based on that same "Case Management Policy: 0101".

Obvious from petitioners' November 2, 2021 six-in-one complaint ([#17](#)) is that any interpretation by OIG that Executive Law Article 4-A does not mandate investigation of such meticulously documented, serious and substantial complaint – and pronto – is neither rational nor reasonable. To accommodate the falsehood of "discretion", resting on Ms. Arp's outright lying about the complaint, petitioners have broadened their fifth cause of action by a September 1, 2022 verified amendment ([#84](#)).

As Ms. Arp, by her affirmation, has now substantiated that the "no action" provision of "Case Management Policy: 0101" is being utilized to eviscerate Executive Law Article 4-A, totally, it must be stricken as "overbroad" – declaratory relief the unamended fifth causes of action expressly seeks (at §77) "by CPLR §3001,<sup>fn</sup> if not additionally by the certiorari relief CPLR Article 78 provides".

**AAG Rodriguez' #4 (at pp. 15-16)****"To the Extent that Petitioners Seek a Writ of Prohibition,  
Such Relief is Not Available"**

This section is completely irrelevant. Neither the June 6, 2022 petition ([#1](#)), the June 23, 2022 notice of petition ([#46](#)), nor any of petitioners' orders to show cause seek a writ of prohibition.

**AAG Rodriguez' #5 (at pp. 16-18)****"Governor Hochul, Senate Temporary President Stewart-Cousins  
and Assembly Speaker Heastie are Entitled to Immunity from Petitioners' Claims"**

AAG Rodriguez' assertion of a Speech and Debate Clause defense is predicated on his concealment of the petition's particularized and fully-documented allegations – and the law applicable thereto.

Thus, in *People v. Ohrenstein*, 77 N.Y.2d 38 (1990), cited by AAG Rodriguez (at p. 17), the Court of Appeals stated:

"Historically the Speech or Debate Clause serves to preserve the integrity of the Legislature by preventing other branches of government from interfering with legislators in the performance of their duties. But no matter how far the immunity may extend under the State Constitution, it cannot be said that it was intended to provide a sanctuary for legislators who would defraud the State..."

And, in a dissent on other grounds, Judge Simon noted:

“Legislators are trustees of the public treasury. They may appropriate and spend State funds to the extent authorized, but if they do so to benefit themselves or others personally, they commit a crime.” (at 64).

In *Larabee v. Governor*, 65 AD3d 74, 90-91 (2009), the First Department rejected the Speech and Debate Clause defense of the Senate and Assembly defendants, stating:

‘...defendants assert absolute immunity by operation of the Speech or Debate Clause of NY Constitution, article III, §11. They argue that by virtue of the Speech or Debate Clause, a court is not empowered to inquire into the Legislature’s reasons for adopting or not adopting particular measures which thus remain beyond judicial review....

...Individual statements of legislators or legislative acts may be protected from litigation, but it does not automatically follow that the manner in which legislative decisions are made is similarly protected; otherwise, the fundamental purpose of judicial review, to determine the constitutionality of governmental acts, would be eviscerated...

...As noted by Professor Tribe, ‘to the extent that legislative and nonlegislative actions are entangled in practice, the privileged status of legislative action does not preclude its judicial review,’ which may still be accomplished without formally requiring individual legislators ‘to answer personally for legislative acts’ (Tribe, *American Constitutional Law* §5-20, at 1019). Courts are empowered to determine the constitutional boundaries of each branch of government (*Pataki v New York State Assembly*, 4 NY3d 75, 96, 824 NE2d 898, 791 NYS2d 458 [2004]) and whether an action is within the purview of legitimate legislative activity (*Straniere*, 218 AD2d at 85).

We find that legislative immunity is unavailable to shield defendants from plaintiffs’ separation of powers claim. Since no member of the Legislature has been named a defendant in his or her individual capacity, we need not be concerned with the historical and entirely appropriate concern that a legislator might be harmed by the prospect of civil or even criminal liability as a consequence of his or her unfettered discharge of legislative duties.” (underlining added).

In so-holding, the First Department had before it the argument against the Speech and Debate Clause defense put forward by the judges, who were the plaintiffs, and of *amici* such as then Chief Judge Kaye and the Unified Court System Court, whose October 23, 2008 brief (at p. 39) included the following:

“The Chief Judge’s and Judiciary’s salary-inadequacy claim under the separation-of-powers doctrine, as well as the Compensation Clause claims in this case and in *Kaye v. Silver*...straightforwardly allege that legislative and executive actions and inactions themselves violate the State Constitution. That, of course, is exactly the sort of straightforward ‘judicial review of legislative acts’ that

unquestionably '[l]egislative immunity does not...bar.' *Powell*, 395 U.S. at 503.  
As the Supreme Court said in *Kilbourn v. Thompson*:

'Especially it is competent and proper for this court to consider whether [the legislature's] proceedings are in conformity with the Constitution and laws because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat their acts as null and void.' 103 U.S. at 199, quoted in *Powell*, 395 U.S. at 506."

At bar, Respondent Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie are not named in their individual capacities in petitioners' "straightforward" challenge to the constitutionality and lawfulness of the Legislature's acts with respect to LEC, the FY2022-23 state budget, and Public Officers Law §108.2(b). Moreover, dismissal as to them would have NO practical effect, as they are part of Respondents Senate and Assembly, as to which AAG Rodriguez does not assert a Speech and Debate Clause defense.<sup>13</sup>

As for AAG Rodriguez' attempt (at pp. 16-17) to extend the Speech and Debate Clause to Governor Hochul, this is based on his fraud that petitioners have not demonstrated "any wrongful conduct on the part of the Governor" in connection with the "FY 2022-23 budget and the budget bills at issue"—when her "wrongful conduct" is particularized by petitioners' April 13, 2022 complaint against her to JCOPE (#2) and the petition's allegations based thereon: ¶17, and the sixth cause of action (¶¶78-85), seventh cause of action (¶¶86-90), and eighth cause of action (¶¶91-96).

#### **AAG Rodriguez' #6 (at p. 18)**

#### **"Petitioners' Claims Relating to Budget Negotiations Between the Governor and the Legislature Should Be Dismissed"**

AAG Rodriguez' title – and content – have no bearing on petitioners' claims herein which do not challenge "Budget Negotiations Between the Governor and Legislature" or "'three people in a room' budget negotiations", affirmed by the Third Department in the *CJA v. Cuomo...DiFiore* citizen-taxpayer action on which AAG Rodriguez relies, 167 AD3d 1405, 1412,13 (2018). Petitioners' challenge is to behind-closed-doors budget dealmaking involving the amending of

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<sup>13</sup> As stated by the Court of Appeals in *Maron v. Silver*, 14 NY3d 230 (2010), which consolidated *Larabee* with two other lawsuits brought by judges for judicial pay raises:

"The Speech or Debate Clause applies to only 'members' and to 'any speech or debate in either house.' Nowhere does the Clause state that such immunity applies to either house of the Legislature as a whole, and therefore, it does not apply to the Assembly or the Senate. ...' (at 257)."

bills (#7) – the same as was the subject of the ninth cause of action in *CJA v. Cuomo...DiFiore*, whose particulars the Third Department's December 27, 2018 decision neither identified nor confronted, as, likewise, the lower court decision it affirmed, for the obvious reason that it is flagrantly unconstitutional.

In relying on the Third Department's decision in *CJA v. Cuomo...DiFiore* AAG Rodriguez conceals that its fraudulence was identified by the petition (at ¶87(8)), which also furnished the proof: [CJA's analysis thereof](#) and stated that its accuracy was completely [uncontested](#) when furnished by petitioners to the Court of Appeals by a [March 26, 2019 letter in support of their appeal of right](#). Nor does AAG Rodriguez now contest the accuracy of the analysis, including its pp. 27-28 pertaining to the ninth cause of action constitutional challenge.

**AAG Rodriguez' #7 (at pp. 18-19)**  
**“To the Extent Petitioners Challenge Legislative Rules,  
 Such Claims Should Be Dismissed”**

This section, by its title heading, is false. Petitioners are NOT challenging legislative rules. They are challenging the Legislature's violation of its own rules – and AAG Rodriguez first sentences recognizes this in stating:

“...it appears that Petitioners also allege that the Senate and Assembly acted in violation of their own rules in considering the 2022-23 state budget. NYECF No. 1, at sixth, seventh, eighth, and ninth causes of action”.

None of AAG Rodriguez' cited cases stand for the proposition that the Legislature, being constitutionally enabled to make its own rules, is then free to violate the rules it has made. And making this further clear is *Seymour v. Cuomo*, 180 A.D.2d 215, 217 (1992),<sup>14</sup> wherein the Third Department stated:

“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.”

Just as the Legislature is not free to violate statutes – and AAG Rodriguez makes no argument that it is – so, too, is the Legislature not free to violate its own functionally-equivalent rules.

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<sup>14</sup> *Seymour v. Cuomo* is the case that at the Court of Appeals was *King v. Cuomo* – the same as featured by petitioners' ninth cause of action in *CJA v. Cuomo...DiFiore* as substantiating the unconstitutionality of three-person-in-a-room budget dealmaking (#7).

**AAG Rodriguez' #8 (at pp. 19-23)****"Petitioners' Constitutional Challenges to the FY2022-23 State Budget, Budget Bills and the Public Officers Law Should be Dismissed"**

AAG Rodriguez here asserts (at p. 20) that petitioners' sixth, seventh, eighth, and ninth causes of action which "challenge, in part, the constitutionality of the entire FY 2022-23 State Budget and budget bills S.8006-C/A.9006-C and S.8001-A/A.9001" are based on "conclusory and inflammatory allegations" that "do not state a claim". The objected-to "inflammatory language" is "larceny", "fraudulent", and "flagrant violation" – and, according to him (at p. 21), "Petitioners have not articulated any allegations that sufficiently state a claim that the challenged legislative enactments are unconstitutional, let alone are unconstitutional beyond a reasonable doubt." This is completely false – as AAG Rodriguez well knows in concealing ALL the allegations of each cause of action wherein the particulars are furnished, with substantiating proof – then reinforced and amplified by petitioners' June 28, 2022 CPLR §2214(c) notice to furnish papers to the Court (#60).<sup>15</sup>

He makes no comparable besmirchment of the allegations of petitioners' tenth cause of action pertaining to Public Officers Law §108.2(b) – and conceals its allegations, *in toto*.

**As to Petitioners' sixth cause of action (§§78-85)**

The totality of what AAG Rodriguez here states is, as follows:

"In the sixth cause of action, Petitioners make a series of conclusory and incoherent claims that the Ethics Commission Reform Act of 2022 was 'enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules and caselaw.' NYECF No. 1, ¶80. Petitioners assert that if JCOPE had issued 15-day letters to the individuals they complained about, JCOPE 'would have known from written responses' that ECRA was unconstitutionally enacted. *Id.*, at ¶80. This claim is baseless and fails to state a claim that the enacted statute is unconstitutional. Petitioners further claim that ECRA was unconstitutionally enacted under 'three people in a room' negotiations and/or that legislative rules were allegedly not followed. These claims fail to state a claim as set forth in Points 6 and 7 above.

<sup>15</sup> Having concealed the governing standard that on a motion to dismiss for failure to state a cause of action, the pleaded allegations and inferences are presumed true, AAG Rodriguez also does not identify the exception, which he seeks to foist on the Court, reflected, for example, in *Horowitz v. Fallon*, 204 A.D.3d 1177 (3<sup>rd</sup> Dept. 2022): "This favorable treatment [of presuming the truth of the allegations and inferences] is not endless, however, and where the allegations in the complaint consist of bare legal conclusions, 'fail[] to assert facts in support of an element of the claim, or . . . the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery,' dismissal is warranted under *CPLR 3211 (a) (7) (Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142...[2017]; *see Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 175... [2021]; *A.M.P. v Benjamin*, 201 AD3d 50, 54... [2021]); *Matter of Goldberg v. Elia*, 174 A.D.3d 1214 (3<sup>rd</sup> Dept. 2019): "will not save allegations that consist of bare legal conclusions".

Lastly, Petitioners claim that ECRA is non-fiscal policy that was improperly inserted into an appropriation bill. Petitioners claim that since it makes substantive policy, it could not constitutionally be introduced pursuant to Article VII and 'it became an introduced budget bill by fraud by the Legislature'. NYECF No. 1. at ¶81. This is not true. As set forth in the public link of the Legislative Retrieval System (LRS), which offers access to New York State Legislation, both Article VII Language Bills and Appropriation Bills were included as part of the NYS FY 2022-23 budget. See, <http://public.leginfo.state.ny.us/navigate.cgi>. The Ethics Commission Reform Act of 2022 was enacted as part of the 2022-23 Education, Labor and Family Assistance Article VII Language Bill S. 8006-C and A. 9006-C. It was not included as part of an appropriation bill.

The state constitution specifically authorizes the governor to submit 'a bill or bills containing all proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.' NY Const art VII, §3 (emphasis added). Thus, a language bill containing proposed legislation is appropriate under Article VII. The constitution does not limit budget legislation to appropriation bills only."

Not one of the eight paragraphs of petitioners' sixth cause of action is "conclusory and incoherent". The cited ¶80 identifies petitioners' April 13, 2022 complaint to JCOPE (#2) as particularizing the "flagrant violations" that would already be verified had JCOPE ministerially issued 15-day letters. This is obvious from the April 13, 2022 complaint, with its section entitled "THE EVIDENCE" (at p. 3), thereafter followed by a subsection (at pp. 10-14) specific to the "ethics commission reform act of 2022".

Petitioners' ¶81, the only other paragraph to which AAG Rodriguez cites and fragmentally quotes, presents the opening of the subsection specific to the "ethics commission reform act of 2022". In full, ¶81 reads:

"In pertinent part, petitioners' April 13, 2022 complaint ([Exhibit A-1](#), p. 10) states:

'Unlike the legislative/judiciary budget bill – which is an appropriation bill – the education, labor, health, and family assistance budget bill is not. It makes substantive policy that Governor Hochul could not constitutionally introduce pursuant to Article VII – and which, in fact, she had furnished only as proposed legislation. It became an introduced budget bill by fraud of the Legislature. I identified this in the three-minute testimony I read at the Legislature's January 25, 2022 'public protection' budget hearing – and the written copy I submitted gave the specifics in its footnote 1, stating:

'The mechanics of this fraud – and the unconstitutionality of the insertion of non-fiscal policy into the budget – were dissected by [my March 18, 2020 letter to then Governor Cuomo](#), which I simultaneously furnished to the Legislature – and identified in the [62 grand jury/public corruption complaints I filed with New](#)



[York's 62 district attorneys pertaining to the FY2020-21 budget.](#)

...'

My March 25, 2022 e-mail to the legislators further underscored the importance of this March 18, 2020 letter, as likewise the unconstitutionality of 'three people in a room' budget deal-making – which is how Part QQ thereafter came to be inserted into [S.8006-C/A.9006-C](#)." (hyperlinking in ¶81).

The importance of the March 18, 2020 letter ([#6](#)) was reinforced by each of the three subsequent paragraphs of the sixth cause of action, with the first sentence of the first of these, ¶82, stating:

"The March 18, 2020 letter ([Exhibit A-5](#)) is the starting point for the declaration that Part QQ was unconstitutionally enacted – and petitioners' April 13, 2022 complaint ([Exhibit A-1](#)) is not the first time that JCOPE had the duty to verify its truth." (hyperlinking in ¶82).

The March 18, 2022 letter was, additionally, featured by petitioners' June 28, 2022 notice pursuant to CPLR §2214(c) – with its first three items requesting that respondents furnish the Court with:

"(1) all records of **findings of fact and conclusions of law** made with respect to petitioners' March 18, 2020 letter to then Governor Cuomo ([Ex A-5 to petition](#)), simultaneously furnished to the Legislature and Budget Director Mujica – identified at ¶82 of the June 6, 2022 verified petition as 'the starting point for the declaration that Part QQ [of Education, Labor, Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C – the 'ethics commission reform act of 2022'] was unconstitutionally enacted';

(2) all records of **findings of fact and conclusions of law** made with respect to petitioners' January 22, 2022 written statement in support of oral testimony ([Exhibit A-2 to petition](#)), January 25, 2022 written oral testimony ([Exhibit A-3 to petition](#)), and March 25, 2022 e-mail to 41 legislators – including to Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie ([Exhibit A-4 to petition](#)) – identifying petitioners' March 18, 2020 letter and specifying other constitutional, statutory, and legislative rule violations pertaining to the FY2022-23 state budget;

(3) all records of **discussions** of the aforesaid March 18, 2020 letter ([Ex A-5 to petition](#)), January 22, 2022 written statement in support of oral testimony ([Exhibit A-2 to petition](#)), January 25, 2022 written oral testimony ([Exhibit A-3 to petition](#)), and March 25, 2022 e-mail to 41 legislators Heastie ([Exhibit A-4 to petition](#)): (a) in any legislative committee meetings; (b) in any of the closed-door Senate and Assembly majority and minority party conferences". (bold in the original).

In face of this, AAG Rodriguez conceals the March 18, 2020 letter, whose accuracy he does not deny or dispute – substituting instead outrightly false and misleading assertions, rebutted by the letter and the sixth cause of action. As these make evident:

- petitioners do **NOT** allege that the “ethics commission reform act of 2022” was “improperly inserted into an appropriation bill”. They allege that it was inserted into a “non-appropriation” bill and that such bills are unconstitutional, with analysis furnished by their March 18, 2020 letter;
- AAG Rodriguez’ link <http://public.leginfo.state.ny.us/navigate.cgi> does **NOT** establish that petitioners’ allegation is “not true” that the Education, Labor and Family Assistance budget bill was introduced into the Legislature by fraud. That link is the wrong link. Based on the March 18, 2020 letter, the link he should have supplied – but did not – is to the Division of the Budget’s “[FY2023 Executive Budget Legislation](#)”, establishing that the Governor presented the bill, a so-called “Article VII bill”, as a draft bill, requiring Senate and Assembly sponsors, accompanied by a memorandum to support such sponsorship by them:
  - [Education, Labor and Family Assistance \(ELFA\) Bill \(PDF\)](#)
  - [Education, Labor and Family Assistance \(ELFA\) Memorandum in Support \(PDF\)](#)
- AAG Rodriguez’ citation to, and quotation of, Article VII, §3 does **NOT** establish that “a language bill containing proposed legislation is appropriate under Article VII” or that “The constitution does not limit budget legislation to appropriation bills only” – and proving this is his failure to cite to, and quote from, other provisions of Article VII, such as §3, and his failure to furnish any legislative history and any caselaw – such as the March 18, 2020 letter presents to establish the unconstitutionality of “non-appropriation” bills and of inclusion of non-revenue-producing policy.
- petitioners do **NOT** allege that the “ethics commission reform act of 2022” was “unconstitutionally enacted under ‘three people in a room’ negotiations” – but by “three people in a room” budget dealmaking involving amending bills, as to which AAG Rodriguez’ cited Point 6 of his memorandum has no applicability;
- AAG Rodriguez’ cited Point 7 of his memorandum has **no** applicability to petitioners’ allegations that the Legislature violated its own rules in enacting the “ethics commission reform act of 2022”— as it is devoid of law that the Legislature’s violations of its own rules are not justiciable.



**As to Petitioners' seventh cause of action (§§86-90)**  
**and their eighth cause of action (§§91-96)**

AAG Rodriguez here clumps together these two causes of action and states (at p. 22):

“The seventh and eighth causes of action, contain similar rambling and unclear allegations that the state budget and budget bills were improperly enacted based on ‘three people in a room’ negotiations or that legislative rules were allegedly not properly followed. These claims fail to state a claim as set forth in Points 6 and 7 above.”

There are NO “rambling and unclear allegations” in either the seventh cause of action, challenging the whole of the state budget, or the eighth cause of action, challenging Legislative/Judiciary Budget Bill #8001-A/A.9001-A – and AAG Rodriguez cites not a single example in support of his knowingly false claim.

Nor are these two causes of action limited to “‘three people in a room’ negotiations” and violations of legislative rules, which is all AAG Rodriguez identifies. As neither challenge “‘three people in a room’ negotiations”, his Point 6 pertaining thereto is inapplicable. Likewise, his Point 7 is inapplicable to a challenge to the Legislature’s violations of its own legislative rules, as here at issue.

**As to Petitioners' ninth cause of action (§§97-105)**

AAG Rodriguez states (at p. 22):

“In the ninth cause of action Petitioners allege in wholly conclusory and incoherent terms that there was alleged ‘flagrant corruption in handling’ Petitioners’ own prior complaints made to various legislators. These allegations do not state a claim.”

There is nothing “wholly conclusory and incoherent” about petitioners’ ninth cause of action – and AAG Rodriguez not only wholly conceals ALL its particularized, evidence-supported allegations, but the relief being sought:

“Declaring Unconstitutional, Larcenous, and Void the FY2022-23 Appropriations for the New York State Commission on Judicial Conduct, the New York State Inspector General, the Appellate Division Attorney Grievance Committees, and the Unified Court System’s Inspector General – Based on the Evidence of their Flagrant Corruption in Handling Complaints, Furnished by Petitioners at the Legislature’s January 25, 2022 ‘Public Protection’ Budget Hearing and Again by their March 25, 2022 E-Mail”.

**As to Petitioners' tenth cause of action (§§106-114)**

All the allegations of petitioners' tenth cause of action are concealed by AAG Rodriguez (at pp. 22-23), other than that it seeks "a declaration that POL §108(2)(b) is unconstitutional as written and as applied, as it is in violation of Article III §10 of the NYS Constitution" – omitting that POL §108(2)(b) is also alleged to violate the Legislature's own rules that conform with Article III, §10.

Instead, AAG Rodriguez rests on three inapplicable decisions: *Urban Justice Ctr. v. Pataki*, 38 A.D.3d 20 (2006), not indicating any Article III, §10 challenge to POL §108.2(b); *Oneonta Star. Div. of Ottaway Newspapers, Inc. v County of Schoharhie*, 112 A.D.2d 622 (3d Dept. 1985), not pertaining to the Legislature and, therefor, not involving Article III, §10, and *Matter of Real Estate Bd. of N.Y., Inc. v City of New York*, 165 A.D.3d 1, 9, n 3 (1st Dept 2018), not pertaining to the Legislature or POL §108.2(b). In other words, petitioners' challenge based on Article III, §10 is one of first impression – as to which he is unable to craft any argument, in opposition.

**AAG Rodriguez' #9 (at pp. 23-24)**  
**"Attorney General James and Comptroller DiNapoli  
 are Not Proper Respondents"**

AAG Rodriguez here purports that Attorney General James and Comptroller DiNapoli are improperly named as parties as they are "not alleged to have committed any wrongdoing whatsoever" (at p. 23). This is false, as AAG well knows in truncating §§14-15, which he quotes, to remove that Attorney General James and Comptroller DiNapoli were not only "subject to JCOPE's ethics jurisdiction", but were, respectively:

- "specifically complained-against by petitioners' March 5, 2021 complaint [to JCOPE], which, as to [Attorney General James] rests on petitioners' February 11, 2021 complaint against her to the Appellate Division attorney grievance committees ([Exhibit D-2](#)) and its included February 7, 2021 complaint to the New York State Commission on Judicial Conduct ([Exhibit D-3](#))" (hyperlinking in the original);
- "specifically-complained against by petitioners' March 5, 2021 complaint and June 27, 2013 complaint."

Pursuant to CPLR §3014 "A copy of any writing which is attached to a pleading is a part thereof for all purposes." The above-cited March 5, 2021 and June 27, 2013 complaints to JCOPE – [Exhibit D-1](#) and [Exhibit G](#) to the petition — furnish all the graphic particulars – and evidence – of the active, participating roles of Attorney General James and Comptroller DiNapoli in the mass of corruption and larceny, involving the state budget and the pay raises – of which they are beneficiaries, "protected" by New York's sham public protection/ethics authorities – the subject of petitioners' causes of action.

To further reinforce this, petitioners' September 1, 2022 verified amendment to their June 6, 2022 petition/complaint ([#84](#)) so-states.

Finally, with regard to AAG Rodriguez' assertion: "Petitioners point to no specific responsibilities imposed upon the Attorney General or the Comptroller in relation to the consideration and enactment of the state budget", such is furnished, more than once, by the substantiating evidence for those two JCOPE complaints. This includes, the [September 2, 2016 verified complaint in \*CJA v. Cuomo...Schneiderman...DiNapoli...DiFiore\*](#) – whose obliteration by Attorney General James, *et al.* is the subject of the above-cited February 11, 2021 complaint against her to the attorney grievance committees:

“[The] Attorney General...heads New York’s department of law (New York Constitution, Article V, §4). His duty is to ‘prosecute and defend all actions in which the state is interested’; and to ‘protect the interest of the state’; where ‘in his opinion the interests of the state so warrant’ (Executive Law §63.1), for which he has extensive investigative and prosecutorial powers (Executive Law §63). Pursuant to State Finance Law Article 7-A, he is expressly empowered to bring citizen-taxpayer actions or to represent/intervene on behalf of plaintiffs. State Finance Law Article 13 also empowers him to bring actions under the false claims act or to represent/intervene on behalf of plaintiffs.” (§14a);

“[The] Comptroller...heads New York State’s ‘department of audit and control’ (New York Constitution, Article V, §§1, 4), is ‘responsible for ensuring that the taxpayers’ money is being used effectively and efficiently to promote the common good’ (Comptroller’s website: [www.osc.state.ny.us/about/response.htm](http://www.osc.state.ny.us/about/response.htm))...” (§15a).

**Ex. B-1 to Petitioners' Sept. 15, 2022 Affidavit: July 8, 2022 e-mail to Court [R.700]**

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Friday, July 8, 2022 3:26 PM  
**To:** 'Gandin Chambers'; mcollado@nycourts.gov  
**Cc:** gregory.rodriguez@ag.ny.gov; [stacey.hamilton@ag.ny.gov](mailto:stacey.hamilton@ag.ny.gov)  
**Subject:** **Yesterday's oral argument -- OSC for determination of petitioners' matter of law entitlement to TRO/preliminary injunction -- CJA., et al. v. JCOPE, et al. (Albany Co. #904235-22)**

Dear Law Clerk Collado,

Following up our brief phone conversation at about 9:40 this morning, this is to reiterate my assertion that what took place yesterday was unacceptable – and that I believe the ONLY reason for my being burdened with the effort and expense of having to travel up to Kingston for an appearance before Judge Gandin on my OSC for determination of petitioners' *matter of law* entitlement to a TRO/preliminary injunction was so that Judge Gandin could AVOID having to write a decision – which he would not be able to justify.

I am in process of ordering the transcript. Without it, I have only my recollection – and it is my recollection that Judge Gandin gave absolutely NO explanation for wilfully violating the controlling legal standard of [CPLR §§6312\(a\) & \(c\)](#), which I so strenuously brought to his attention – and that his denial of the TRO/preliminary injunction was utterly conclusory, laced with falsehood as to the issue and the record before him.

Upon returning to White Plains, shortly before 5 p.m. yesterday, sickened by what had taken place, I immediately telephoned to clarify with you Judge Gandin's ruling with respect to [petitioners' June 28<sup>th</sup> amended notice of petition](#), annexed as Exhibit A to [my June 28<sup>th</sup> affidavit in opposition to Assistant Attorney General Rodriguez' June 27<sup>th</sup> dismissal motion and in further support of petitioners' June 23<sup>rd</sup> notice of petition](#). Here, too, it was my recollection that, without reasons, Judge Gandin denied my request that the first branch of the June 28<sup>th</sup> amended notice for the Attorney General's disqualification, be substituted for the mooted first two branches of the June 23<sup>rd</sup> notice pertaining to the OSC/preliminary injunction.

Suffice to say, and I did say it yesterday, vigorously, that Assistant Attorney General Hamilton's oral argument was, with virtually every word she spoke, fraud, just as [Assistant Attorney General Rodriguez's June 27<sup>th</sup> dismissal motion](#) had been fraud – mandating that Judge Gandin inquire as to who had determined the “interest of the state” pursuant to [Executive Law §63.1](#) and to disqualify Attorney General James, a respondent representing all respondents, for the direct interest obvious from [Exhibit D-1](#) to the petition, with its included [D-2](#) and [D-3](#).

No litigant should have to suffer, as I did yesterday, such brazen misconduct by adverse counsel, let alone by the office of the Attorney General – or a judge who tolerates and abets it, as Judge Gandin did, including, at the end of the proceeding by his falsehood that unspecified “law” required the Attorney General to represent respondents, when the pertinent “law” is, as I stated, Executive Law §63.1, predicating the Attorney General's litigation posture, either defending or prosecuting, on the “interest of the state”. If Judge Gandin is refusing to address that threshold issue – as he did yesterday, ignoring my entreaty on the subject even before Ms. Hamilton spoke – he should so-state in an appealable order – and I here so-request.

Thank you.

Elena Sassower, unrepresented individual petitioner/plaintiff  
& “on behalf of the People of the State of New York & the Public Interest”  
914-421-1200

**R.700**

Ex. B-2 to Petitioners' Sept. 15, 2022 Affidavit: Aug. 16, 2022 e-mail to court reporter [R.701-702]

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Tuesday, August 16, 2022 12:01 PM  
**To:** 'Barbara VanBlarcum'  
**Cc:** 'stacey.hamilton@ag.ny.gov'; 'Gandin Chambers'; 'mcollado@nycourts.gov'; 'gregory.rodriquez@ag.ny.gov'

**Subject:** July 7, 2022 transcript -- CJA., et al. v. JCOPE, et al. (Albany Co. #904235-22)

**Attachments:** 7-7-22-transcript.pdf

Dear Court Reporter Van Blarcum,

Thank you for your August 1, 2022 e-mail, furnishing me with your transcription of the July 7, 2022 oral argument before Judge Gandin on petitioners' *matter of law entitlement* to a TRO/preliminary injunction.

Attached is my mark-up of your transcription, reflecting appropriate corrections to your title page and, with respect to your transcription, my proposed corrections to what I believe are errors in your notes as to what was stated at the argument.

To enable those present to respond with their recollections – or offer their own corrections, I am simultaneously e-mailing Assistant Attorney General Stacey Hamilton, Judge David Gandin, and his principal law clerk, Michael Collado. I am also cc'ing Assistant Attorney General Gregory Rodriquez, who was not present.

Below is the exchange of e-mails pertaining thereto.

Please advise.

Thank you.

Elena Sassower, unrepresented individual petitioner/plaintiff  
& "on behalf of the People of the State of New York & the Public Interest"  
914-421-1200

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Monday, July 11, 2022 11:21 AM  
**To:** 'Gandin Chambers' <[gandinchambers@nycourts.gov](mailto:gandinchambers@nycourts.gov)>  
**Cc:** 'Barbara VanBlarcum' <[bvanblar@nycourts.gov](mailto:bvanblar@nycourts.gov)>; [stacey.hamilton@ag.ny.gov](mailto:stacey.hamilton@ag.ny.gov); [gregory.rodriquez@ag.ny.gov](mailto:gregory.rodriquez@ag.ny.gov)

**Subject:** Will do -- RE: Yesterday's oral argument -- OSC for determination of petitioners' matter of law entitlement to TRO/preliminary injunction -- CJA., et al. v. JCOPE, et al. (Albany Co. #904235-22)

Dear Law Clerk Collado,

Thank you for your below e-mail, responding to mine, also below.

Ex. B-2 to Petitioners' Sept. 15, 2022 Affidavit: Aug. 16, 2022 e-mail to court reporter [R.701-702]

The transcript, costing \$172, has already been ordered, with payment already mailed. So that no time is wasted, I am cc'ing court stenographer Barbara VanBlarcum with a request to directly furnish her original transcript to chambers, sending a pdf of the transcript to me and Assistant Attorney General Hamilton by e-mail, so that we may promptly provide her and the Court with our proposed corrections of typographic and other errors, if any.

Upon Judge Gandin's so-ordering the transcript, I will appeal ALL his rulings, including his denial of his own disqualification which, as I recollect, was ALSO without reasons and unaccompanied by any disclosure of his financial and other interests, divesting him of jurisdiction.

Again, thank you.

Elena Sassower, unrepresented individual petitioner/plaintiff  
& "on behalf of the People of the State of New York & the Public Interest"  
914-421-1200

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**From:** Gandin Chambers <[gandinchambers@nycourts.gov](mailto:gandinchambers@nycourts.gov)>  
**Sent:** Monday, July 11, 2022 10:53 AM  
**To:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Cc:** [gregory.rodriquez@ag.ny.gov](mailto:gregory.rodriquez@ag.ny.gov); [stacey.hamilton@ag.ny.gov](mailto:stacey.hamilton@ag.ny.gov)

**Subject: RE: Yesterday's oral argument -- OSC for determination of petitioners' matter of law entitlement to TRO/preliminary injunction -- CJA., et al. v. JCOPE, et al. (Albany Co. #904235-22)**

Good Morning Ms. Sassower,

If you need a written order denying the request for a temporary restraining order, once you have a copy of the transcript you may mail it to chambers. The judge will "so order" the record from the hearing and it will become a written order which you may appeal.

*Michael Collado*  
Principal Law Clerk to the  
Hon. David M. Gandin  
Ulster County Supreme Court  
285 Wall Street  
Kingston, NY 12401  
(845) 481-9399  
[mcollado@nycourts.gov](mailto:mcollado@nycourts.gov)  
  
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Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 STATE OF NEW YORK  
2 SUPREME COURT : COUNTY OF ULSTER

3 ~~Elena Ruth Sassower~~, Center for Judicial Accountability,  
4 Inc., Elena Ruth Sassower individually and as Director of  
5 the Center for Judicial Accountability, Inc., acting on  
6 their own behalf and on behalf of the People of the State  
7 of New York & the Public Interest,

8 Petitioners/Plaintiffs,

9 - against -

10 Index No. 904235-22

11 New York State Joint Commission on Public Ethics,  
12 Legislative Ethics Commission, New York State Inspector  
13 General, Kathy Hochul in her official capacity as  
14 Governor of the State of New York, Andrea Stewart-Cousins  
15 in her official capacity as Temporary Senate President,  
16 New York State Senate, et al., *most include*

17 Respondents/Defendants. *Cetitia James in her official capacity as Attorney General of the State of New York*

18 ORDER TO SHOW CAUSE

19 HELD AT: ULSTER COUNTY COURTHOUSE  
20 285 Wall Street  
21 Kingston, New York 12401  
22 JULY 7, 2022

23 HELD BEFORE: HON. DAVID GANDIN

24 ELENA SASSOWER *unrepresented*  
25 ~~Self-Represented~~ Litigant for the  
Petitioner/Plaintiff  
10 Stewart Place  
Apartment 2D E  
White Plains, New York 10603

NEW YORK STATE ATTORNEY GENERAL  
The Capitol  
Albany, New York 12224  
BY: Stacey Hamilton, ESQ.

BARBARA VAN BLARCUM  
Official Reporter  
Ulster County Courthouse  
Kingston, NY 12401  
Bvanblar@nycourts.gov

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 THE COURT: Good afternoon. Can I have  
2 your appearance, please. I'll start with the  
3 petitioner/plaintiff.

4 MS. SASSOWER: Elena Sassower,  
5 unrepresented individual petitioner/plaintiff.

6 MS. HAMILTON: Stacey Hamilton from the  
7 attorney general's office.

8 THE COURT: Is that c-y or e-y?

9 MS. HAMILTON: E-y.

10 THE COURT: I reviewed the procedural  
11 history of the case and the filing. I have also  
12 reviewed the determination by Judge Lynch and Judge  
13 Mackey.

14 Yesterday evening, I think after 10:00  
15 p.m., Ms. Sassower, you filed what I believe is the  
16 third order to show cause in this action/proceeding  
17 seeking provisional relief that you claim needs to  
18 be determined today by some dispositive event that  
19 is going to happen on July 8th.

20 MS. SASSOWER: Tomorrow.

21 THE COURT: The 7th. Today is the 7th.  
22 Yes, July 8th. I correct my prior statement. I'm  
23 also aware there is a motion to dismiss pending and  
24 I have looked at that as well. To complicate the  
25 procedural history a little further, in opposition



Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 to that motion Ms. Sassower has indicated an  
2 intention to file an amended <sup>notice of</sup> petition/complaint,  
3 which she has included as an exhibit to her  
4 opposition papers. I would like to start with that  
5 small procedural point first.

6 Ms. Sassower, Exhibit B to the opposition  
7 to the defendant's/respondent's motion to dismiss  
8 was an amended <sup>notice of</sup> petition.

9 MS. SASSOWER: Exhibit A, your Honor.

10 THE COURT: I apologize. And I think  
11 Exhibit B was a summons which implicitly cures the  
12 alleged failure to file a summons with the  
13 commencement with this action. Do you plan to file  
14 those documents and make them the operative  
15 pleadings in this action?

16 MS. SASSOWER: Your Honor, I  
17 particularized that the paltry dismissal motion  
18 made by Assistant District Attorney Rodriguez was  
19 frivolous, fraudulent and did not constitute  
20 grounds for dismissal by the two cases that he  
21 cited.

22 THE COURT: Ms. Sassower, I'm going to  
23 interrupt you. I'm not here to argue the merits of  
24 that motion. For the court to make rulings in the  
25 case, it needs to know what the operative pleadings

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 are or going to be. So just listen to me and  
2 please answer my specific questions. Do you intend  
3 to file those documents to make them the operative  
4 pleadings in this case?

5 MS. SASSOWER: That was an issue for the  
6 determination of the court. That's what I posited  
7 to your Honor. I said that it was, I did not  
8 believe it to be necessary, but I was deferring to  
9 you. Insofar as the amended notice of petition, I  
10 identified that it would be returnable at a date  
11 after the Ethics Commission Reform Act of 2022  
12 would be taking effect, which is tomorrow, and  
13 therefore the request for injunctive relief would  
14 be moot.

15 So I removed that and replaced as the  
16 first issue what, with all respect, has to  
17 additionally be a first issue here, which is  
18 whether or not the attorney general, who appears  
19 before you, <sup>has</sup> made a determination as to the  
20 interest of the state pursuant to Executive Law  
21 63.1, which predicates the attorney general's  
22 position in litigation on a <sup>de</sup> termination of the  
23 interest of the state. It's not a knee jerk  
24 defense of defendants.

25 THE COURT: Ms. Sassower, we are going to

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 get to the subject of your motion. It behooves us  
2 all to keep the record clear. I first want to  
3 address that point as to your intentions, which you  
4 responded clearly.

5 MS. SASSOWER: To the court with respect  
6 to Exhibits A and B, which were served on the  
7 attorney general as reflected.

8 THE COURT: So before the court today is  
9 an order to show cause that was filed last night  
10 seeking provisional relief. It's your application,  
11 Ms. Sassower. Unless there are procedural issues  
12 you want to address, Ms. Hamilton, I'm going to ask  
13 Ms. Sassower to be heard on her application.

14 MS. HAMILTON: Okay, your Honor.

15 MS. SASSOWER: I believe that my position,  
16 the facts and the law are before the court  
17 presented by my, I believe it was four affidavits  
18 in support of injunctive relief, TRO preliminary  
19 injunction, which I have been seeking to secure  
20 since June 7th. It's now a month later. I  
21 identified at the outset and thereafter that  
22 petitioner's entitlement is as a matter of law,  
23 because the issue presented is the  
24 unconstitutionality and unlawfulness of the  
25 enactment of the Ethics Commission Reform Act of

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1           2022 as part of the budget, and that the  
2           unconstitutionality unlawfulness was particularized  
3           in the verified complaint with substantiating  
4           evidence as to which petitioners had a 100 percent  
5           likelihood of success on the merits. The only  
6           glitch here is that it needed to be heard by a fair  
7           and impartial tribunal that was going to address  
8           the law and the facts.

9           I further identified, obviously, the  
10          grounds for a TRO, the grounds for a preliminary  
11          injunction start with substantial likelihood of  
12          success on the merits. And the evidence presented,  
13          as to which you have on papers, you have on papers  
14          nothing that denies, disputes, contests let alone  
15          sworn statements or evidence that you don't have,  
16          that the enactment violated constitutional  
17          provisions, statutory provisions, legislative  
18          rules, case law.

19          The second prong, of course, as your Honor  
20          is aware, is immediate irreparable injury. You  
21          have presently no operative entity, ethics entity  
22          that can assume the functions that it is supposed  
23          to be operating as of tomorrow.

24          Should I hand up what I emailed to the  
25          court this morning, that I ascertained that none of

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 the appointments of the 11 commissioners, none of  
2 those nominations have been made by the appointing  
3 authorities. So there is going to be a void if  
4 JCOPE is allowed to pass out of existence <sup>despite</sup> ~~because~~  
5 <sup>its</sup> ~~of an~~ unconstitutional unlawful enactment. There  
6 is nothing replacing it. Is that an immediate  
7 irreparable injury? I would say it truly is,  
8 because actually there is no, there is not even a  
9 forecast as to when members would be nominated, and  
10 of course there has to be appointment of staff. So  
11 you don't have an operating entity.

12 Moreover as I identified in the verified  
13 petition, which is the subject of the causes of  
14 action, the enactment of this so-called Ethics  
15 Reform Commission of 2022 was a deceit designed to  
16 strip the public of its valuable rights,  
17 enforceable through ~~mundaneness~~ <sup>mandamus</sup>.

18 THE COURT: Ms. Sassower, I have to ask  
19 you a question. Is there something in the New York  
20 State Constitution requiring an ethics commission  
21 on either what you call JCOPE or some analogous  
22 type body? Is there a constitutional mandate for  
23 that type of body?

24 MS. SASSOWER: We have a constitutional  
25 right to the safeguards of the law which are

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

in significant  
1 insignificant respects ensured by a functioning  
2 ethics entity, yes.

3 THE COURT: Can you direct the court to  
4 some specific constitutional provision, because I  
5 didn't see one in your papers mandating the  
6 existence of this type of body.

7 MS. SASSOWER: Okay, I would be happy to  
8 examine the constitution and bring the pertinent --  
9 but I do not understand how that is, with all  
10 respect, germane to the simple issue.

11 THE COURT: Let me explain it to you.

12 MS. SASSOWER: As to whether the enactment  
13 of this provision that will take affect tomorrow is  
14 constitutional and lawful as to which you have an  
15 evidentiary presentation. You have a verified  
16 petition. You have sworn affidavits. You have  
17 nothing on the other side. You have nothing,  
18 nothing to contest, that even disputes, that the  
19 enactment is <sup>un</sup>constitutional as enacted, <sup>un</sup>lawful  
20 constitution. <sup>al</sup> That's the issue.

21 Now the third prong, in addition to -- so  
22 you have substantial likelihood, you have 100  
23 percent. There is no evidence. You don't even  
24 have a statement. You don't even have, as a matter  
25 of law -- I'm here to speak to the issue of what


Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1           this court's duty is pursuant to Section 6312  
2           pertaining to preliminary injunctions. I have met  
3           the burden that is mine to present by affidavit and  
4           other evidence that there is a cause of action,  
5           okay, and that I am, that this cause of action will  
6           be prejudiced by the statute taking affect  
7           tomorrow, and that the public will be prejudiced,  
8           that there is irreparable injury, because you don't  
9           have among other things, you don't have an ethics  
10          body. Obviously the state deems having an ethics  
11          body to be important. Important. So beginning  
12          tomorrow, you have presently a disfunctioning  
13          ethics body, but you have an ethics body that was  
14          enacted without challenge. Here you have a statute  
15          that was unconstitutionally and unlawfully enacted.  
16          It's all particularized with the evidence. You  
17          have nothing. You don't even have -- you don't  
18          even have an unsworn statement. It's over. They  
19          have not presented to you anything that you can use  
20          to deny the petitioners, acting on behalf of the  
21          People of the State of New York and the public  
22          interest, their lawful entitlement to the granting  
23          of <sup>Q</sup> TRO, but certainly a hearing, an evidentiary  
24          hearing to further prove what is already before  
25          you.

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 Now, the third prong, of course, is the  
2 equities. There are no equities on the other side.  
3 They have made no showing. You have nothing. You  
4 granted a hearing. The papers of the petitioner  
5 left you no choice, and that's why the order to  
6 show cause was framed as it was. It is a matter of  
7 law entitlement.

8 Before I pause, you will of course want to  
9 hear from the Attorney General, and I trust you'll  
10 be good enough to give me a rebuttal. This is  
11 Kingston, the first capital of New York State,  
12 historic first capital of New York State. I have  
13 come up from White Plains where on July 10th at the  
14 courthouse, which is just a couple blocks from  
15 where I live, where the State of New York was  
16 declared. The colony went out of existence when  
17 the State of New York was declared, and this was  
18 the first capital.

19 This case comes to you from Albany, the  
20 present capital. I am here seeking the historic  
21 rights of the People to enforcement of the law.  
22 I'm asking you to do your job, to do your duty, to  
23 demonstrate the independence  which you have a  
24 lengthy tenure. You are paid by the taxpayers.  
25 You are sworn by the law to enforce the law I have



Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 cited to you. The petitioners have met their  
2 burden.

3 Last thing. As I have stated in my June  
4 28th affidavit and opposition to Assistant Attorney  
5 General Rodriguez's dismissal motion, its only  
6 value is for purposes of establishing that the  
7 attorney general must be disqualified because the  
8 dismissal motion is frivolous, fraudulent,  
9 demonstrative, that they have no defense. They  
10 have no defense at all. And with all respect, your  
11 Honor, the question I would ask you to ask of this  
12 assistant attorney general <sup>is</sup> who has made the  
13 determination as to the interest of the state here,  
14 okay, it shouldn't be me, a non-lawyer, who is  
15 pleading for your enforcement of the law so the  
16 people might be protected with a proper ~~and~~ ethics  
17 entity. And of course this case goes way beyond.  
18 It's really about the integrity ~~of the~~ and  
19 constitutionality of state government. You have  
20 something monumental, significant. You are the  
21 most powerful person at this moment in the entire  
22 state. You can right this state simply by  
23 following the law. I'm not asking you for a favor.  
24 I'm asking <sup>on</sup> and ~~treating~~ you, notwithstanding that  
25 you have a salaried interest here, financial

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 interest that divests you of jurisdiction, as all  
2 judges are divested of jurisdiction by reason of  
3 the <sup>if</sup> financial interest.

4 I am asking you to do what the taxpayers  
5 have paid you to do, what you are sworn to do, to  
6 enforce the law whether or not you like it, whether  
7 or not you like the result. The fact is, based on  
8 the papers, the papers, you have nowhere to go but  
9 to do your duty, to grant the TRO, to put this down  
10 for an immediate hearing on the preliminary  
11 injunction. Thank you.

12 THE COURT: Thank you, Ms. Sassower.

13 Ms. Hamilton.

14 MS. HAMILTON: Your Honor, I'm going to  
15 remain seated, if that's okay.

16 THE COURT: That would be fine.

17 MS. HAMILTON: Thank you.

18 Thank you for hearing us today, your  
19 Honor. I would just first note that on the current  
20 matter, the petitioner has filed an order to show  
21 cause and affidavit. In other words, not the  
22 appropriate papers to commence the action. She  
23 references in her order to show cause papers  
24 previously filed in another action, one that was  
25 actually was already decided by I think Judge Lynch

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 prior to this appearance today. The petitioner was  
2 afforded an opportunity to appear on those papers  
3 and that motion. She failed to appear when that  
4 was calendared.

5 Currently the only thing that we have  
6 actually been served with is a notice of petition.  
7 That's it, nothing else. So petitioner has failed  
8 in all respects to meet the requirements for  
9 service pursuant to CPLR 78. We filed a motion to  
10 dismiss on those insufficient papers. That motion  
11 is pending. The petitioner did not file a response  
12 to that motion timely, but that's not before the  
13 court.

14 MS. SASSOWER: I filed the next day.

15 THE COURT: Ms. Sassower, I'm going to ask  
16 you not to interrupt Ms. Hamilton. She gave you  
17 courtesy of not interrupting you. You'll have  
18 ample time to respond.

19 MS. SASSOWER: Thank you.

20 THE COURT: I would like to ask you about  
21 that procedurally, Ms. Hamilton, because the papers  
22 that were forwarded to this court indicate that all  
23 the papers in this action have been filed under  
24 Index Number 904235 of '22. Are you indicating  
25 there is some index number relating to some of

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1           these papers filed?

2           MS. HAMILTON: It seems petitioner is  
3           referencing other papers previously filed. For  
4           instance, she references her June 6th, 2022,  
5           verified petition and complaint in her order to  
6           show cause.

7           THE COURT: Was that not filed under this  
8           index number? Let me tell you it was, because I  
9           looked at the electronic file. The papers have all  
10          been filed under this index number, starting with  
11          the verified petition. Give me a moment.

12          I don't have the date it was filed, but I  
13          want to say it was June 7th. And Judge Lynch did  
14          not dismiss this proceeding with prejudice. He  
15          deemed a temporary prior application for  
16          provisional relief<sup>as</sup> withdrawn based on Ms.  
17          Sassower's indication to the court that she was not  
18          going to show up for the hearing. He did not make  
19          a substantive determination of the petition.

20          MS. HAMILTON: Right, your Honor. So I'm  
21          just simply pointing out in that action the only  
22          thing we were served with was a notice of petition,  
23          properly served with. In this action we have not  
24          been properly served at all, nor have any of the  
25          defendants.

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 THE COURT: Ms. Hamilton, that's the same  
2 action, the same index number.

3 MS. HAMILTON: As you know, your Honor, I  
4 was not the first attorney in this proceeding. My  
5 understanding is the June 6th verified petition  
6 pertained to the prior proceeding that Judge Lynch  
7 ruled on, which had a return date of July 1st.

8 We have only been properly served so far  
9 with a notice of petition on that prior one. The  
10 petitioner has now commenced another action, where  
11 she has <sup>ad</sup>filing an order to show cause and affidavit  
12 bringing in papers from the prior proceeding which  
13 were not properly served on respondents, nor has  
14 this matter been properly served on respondents.

15 Petitioner is right that she has to prove  
16 a likelihood of the success on the merits, and she  
17 has woefully failed to do so. She has made nothing  
18 more than conclusory statements without evidence  
19 whatsoever about unconstitutionality, unlawfulness,  
20 et cetera, simply conclusory statements, nothing  
21 more. She needs to meet her burden as far as a  
22 temporary restraining order and/or a preliminary  
23 injunction that petitioner has to show by clear and  
24 convincing evidence that she will suffer  
25 irreparable harm in the absence of injunctive

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 relief. The alleged irreparable harm claimed by a  
2 party seeking a preliminary injunction must be  
3 immediate, specific, non-speculative and  
4 non-conclusory. Petitioner's allegations are  
5 nothing more than non-speculative, and -- excuse me  
6 -- speculative and conclusory.

7 Furthermore, the alleged irreparable harm  
8 cannot be to the public in general. Petitioner has  
9 clearly stated in her argument before your Honor  
10 that she is bringing this action on behalf of the  
11 public in general. To get the preliminary  
12 injunction and TRO the harm cannot be to the public  
13 in general, it has to be specific to petitioner.  
14 She has not claimed any specific or irreparable  
15 harm that she will suffer, and it cannot be to the  
16 public in general. Before you today she has argued  
17 simply that somehow, generally and again  
18 conclusory, that the public will be harmed.

19 Second, as far as her right to a temporary  
20 restraining order, no temporary restraining order  
21 may be granted in an action arising out of a labor  
22 dispute as defined in Section 807 of the labor law,  
23 nor against a public officer or a municipal  
24 corporation of this state to restrain the  
25 performance of statutory duties.

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1                   Petitioner is simply incorrect as to her  
2                   claims, again just conclusory claims, that there  
3                   will be no ethics board or entity after JCOPE is  
4                   dismantled tomorrow. JCOPE is being dismantled and  
5                   a new entity is immediately going to take affect.  
6                   That entity will engage in the same ethics issues  
7                   that JCOPE dealt with.

8                   Further, your Honor, as far as irreparable  
9                   harm, this act, dismantling JCOPE and creating a  
10                  new entity, became law on April 8th, 2022. It was  
11                  to take affect 90 days after it became law.  
12                  Petitioner waited two months before filing any  
13                  action in this proceeding. So to the extent that  
14                  she claims there will be some irreparable harm or  
15                  injury, she has known about this since January and  
16                  only filed the most recent of her many actions two  
17                  months ago.

18                  Furthermore, the new entity was created to  
19                  improve the transparency and the trust and the  
20                  integrity of ethics enforcement. Again, not only  
21                  is there still going to be an entity to do the  
22                  things that JCOPE did as far as regulating ethics  
23                  and public officers, the new entity is going to do  
24                  those things, simply in a more transparent way.  
25                  The new entity will be subject to FOIL and the open

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 meetings law like other state agencies. So she has  
2 failed to argue irreparable harm again, which her  
3 burden is by clear and convincing evidence for a  
4 TRO and/or a preliminary injunction.

5 Also, to the extent her papers suggest  
6 that the Attorney General's Office is required to  
7 recuse themselves or somehow not represent the  
8 respondents in this matter, again petitioner has  
9 offered nothing more than conclusory statements  
10 without any evidence whatsoever to support the  
11 notion that the Attorney General's Office is not  
12 the proper party to represent the respondents in  
13 this proceeding. In fact, the Attorney General's  
14 Office is statutorily required to do so pursuant to  
15 Executive Law Section 63.

16 If your Honor is inclined to have the  
17 office respond to the preliminary injunction on  
18 papers, given the fact that we have had less than  
19 24 hours notice of this proceeding and our  
20 appearance at this proceeding today, we would  
21 request a minimum of four weeks to submit papers on  
22 the issue of preliminary injunction. Thank you.

23 MS. SASSOWER: May I be heard, your Honor?

24 THE COURT: Yes. Ms. Sassower, I'm going  
25 to ask you, I understand my statutory duties, so



1 just direct your comments to the merits of this  
2 action.

3 MS. SASSOWER: Thank you.

4 Ms. Hamilton is not sworn. Everything she  
5 said is not evidence, and it is replete with one  
6 lie after another lie. And if your Honor has at  
7 all reviewed the electronic record or the hard  
8 copies that I was burdened to furnish, including  
9 the original affidavit of service, you know that  
10 the attorney general was properly served with these  
11 papers. It wasn't just the notice of petition. It  
12 was additionally the verified petition complaint.  
13 She represented to you that they were only served  
14 with a notice of petition. She claimed to you, she  
15 lied outrightly to you in making statement after  
16 statement that it's all conclusory, that no  
17 evidence has been presented. You have a mountain  
18 of prima facie open and shut evidence, including  
19 with respect to her outrageous --

20 THE COURT: Ms. Sassower, can I ask you to  
21 omit the hyperbole. Ms. Hamilton made factual  
22 representations to the court. If she was  
23 inaccurate there is no need to call her a liar or  
24 to claim she has some ulterior motive. She is an  
25 advocate for her client, just like you are an

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 advocate for your cause. Part of the reason we  
2 resolve things in the courtroom is to address these  
3 in a professional and civil manner, so I ask you to  
4 abide by that.

5 MS. SASSOWER: So you have no evidence in  
6 front of you. You have representations by an  
7 attorney general, who if you are conversant with  
8 the record, if you have read anything, if you have  
9 familiarized yourself with the petition that brings  
10 us here and the affidavits that I have submitted,  
11 you should be calling her out. But I will address  
12 the single aspect of law that she raised with you  
13 so that you are not misled as to the matter of law  
14 entitlement here to a TRO. You have no evidence.  
15 You have nothing on the other side on which to deny  
16 this.

17 And I believe that under the statute  
18 parenthetically it says, provided that the elements  
19 required for the issuance of a preliminary  
20 injunction is demonstrated in the plaintiffs'  
21 papers, the presentation by the defendant of  
22 evidence sufficient to raise an issue of fact as to  
23 any such element shall not in itself be grounds for  
24 denial of <sup>the</sup> action. In such event the court shall  
25 make a determination by hearing or otherwise

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703,739]

1 whether each of the elements require<sup>d</sup> ~~the~~ <sup>for</sup> issuance  
2 of a preliminary injunction exist. Well, you don't  
3 have any evidence from this assistant attorney  
4 general. You have an unsworn statement, not  
5 evidentiary.

6 Now I will address the one aspect of law,  
7 less you be misled, which was also thrown out on a  
8 previous -- oh, everything is one action, okay. I  
9 don't know what she is talking about, other  
10 actions, new proceeding.

11 Okay, as to her citation -- give me a  
12 moment, please, your Honor. She made some  
13 reference about no temporary restraining order may  
14 be granted in an action arising out of a labor  
15 dispute, nor against a public officer or municipal  
16 corporation of the state to restrain the  
17 performance of statutory duties. I'm not seeking  
18 to restrain the ~~forms~~ <sup>performance</sup> of statutory duties. I am  
19 seeking to void an unconstitutional statute, ~~to~~ <sup>for</sup> a  
20 declaration of unconstitutionality. That's what is  
21 at issue, the constitutionality, the lawfulness of  
22 a statute.

23 Now, she has not briefed anything here.  
24 And I do not wish you to be misled, but the point  
25 is you have no evidence that refutes, rebuts,

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 contests, denies, disputes any of the mountain of  
2 particulars, not conclusory, but particulars in the  
3 verified petition, which is, as you know,  
4 constitutes a sworn statement for evidentiary  
5 purposes. It's a verified sworn petition on top of  
6 which you have, I believe, four affidavits, sworn.

7 You have not any affidavit, you have no  
8 sworn statement from the attorney general. And  
9 from the respondents, all you have are affidavits  
10 in which they want to point out to you that they  
11 weren't served with a summons. But there is no  
12 requirement of a summons to be served. A notice of  
13 a petition was served, and I identified that there  
14 is no legal authority that that would constitute  
15 the basis for dismissal.

16 THE COURT: Thank you.

17 MS. SASSOWER: The attorney general is a  
18 respondent. Is a respondent. Is disqualified for  
19 interest. Is the subject of Exhibit D, <sup>a</sup> complaint  
20 filed with JOOPE particularized resting on a  
21 complaint filed with the attorney grievance  
22 committee and the Commission on Judicial Conduct  
23 for what this attorney general has been doing, for  
24 her corruption in office.

25 THE COURT: Thank you, Ms. Sassower.

1 Before I rule on the application for provisional  
2 relief, I want to clarify some matters  
3 procedurally.

4 MS. HAMILTON: May I put one more thing on  
5 the record?

6 THE COURT: Sure.

7 MS. HAMILTON: I just want to address  
8 the notion that petitioner also has to for a  
9 preliminary injunction and/or temporary restraining  
10 order demonstrate the strong likelihood of success  
11 on the merits given the drastic remedy she seeks,  
12 and I would just submit to the court that  
13 petitioner has failed to demonstrate the likelihood  
14 of success on the merits whatsoever based on  
15 ineffective service. Thank you, your Honor.

16 THE COURT: Okay, the verified petition in  
17 this action, the only action before me was filed on  
18 June 7th. An amended order to show cause was  
19 filed on June 9th, made returnable on July 15th.  
20 Ms. Sassower, then you filed a notice of petition  
21 on June 24th, made returnable on July 1st.  
22 Ms. Hamilton, your office filed a motion to  
23 dismiss. It was really a cross motion, also  
24 returnable July 1st, and then the instant order to  
25 show cause was filed. In addition to the verified

1 petition, I have three separate applications before  
2 me.

3 And I'd like to understand from you, Ms.  
4 Sassower, in a very succinct manner, the  
5 application filed last night, does that mean you  
6 are withdrawing the order to show cause returnable  
7 on July 15th? Not the petition, the substantive  
8 matter.

9 MS. SASSOWER: It was never served. When  
10 I discovered that Justice Lynch was the twin  
11 brother of Michael Lynch, who sits on the Appellate  
12 Division, I realized what was going on. I said at  
13 that time that I would not -- he is disqualified.  
14 He has no jurisdiction. I said I would not serve  
15 -- it was never served.

16 THE COURT: Thank you.

17 MS. SASSOWER: I was under no obligation  
18 to serve something that was an attempt to sabotage  
19 the petitioner's rights. It was better, more  
20 efficient to proceed by notice of petition. It's  
21 not that I didn't -- I said I wasn't going to show  
22 up. I wasn't going to show up because I was not  
23 going to serve. I was not interested in proceeding  
24 before such a judge who had done what he had done.

25 THE COURT: The notice of petition filed



Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 on June 24th seeks a temporary restraining order  
2 and a preliminary injunction. In the court's view,  
3 that is identical to the relief sought here today.  
4 Is that accurate?

5 MS. SASSOWER: Correct.

6 THE COURT: So I'm going to render a  
7 determination on the application before the court  
8 filed last night with respect to the provisional  
9 relief sought in light, and I'm going to amend the  
10 return date sought in that notice of petition to  
11 give the respondents ample time to respond to that  
12 petition.

13 MS. SASSOWER: If your Honor is going to  
14 do that, then I would request that Exhibit A be  
15 included, because it has as its first branch the  
16 issue of the disqualification and the conflict of  
17 interest, and the interest of the state, that is  
18 the threshold issue with respect to the attorney  
19 general.

20 THE COURT: That application is denied.  
21 We are either going to proceed on the substance of  
22 the verified petition filed on June 7th in  
23 conjunction with the relief sought here today, or  
24 you are going to independently file an amended  
25 petition. I'm not going to make a hybrid of the

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 two documents.

2 MS. SASSOWER: Fine. It's part of the  
3 same thing. It's in the other <sup>and</sup> further relief.

4 THE COURT: That pleading filed on June  
5 7th, Ms. Hamilton, your office has submitted  
6 affidavits in support of your notice of motion  
7 acknowledging service of that.

8 MS. HAMILTON: The notice of petition,  
9 your Honor?

10 THE COURT: The petition and the notice of  
11 petition, correct.

12 MS. HAMILTON: You mean in our motion to  
13 dismiss we acknowledge that we received a notice of  
14 petition?

15 THE COURT: And the petition, yes. It's  
16 all under this index number, not a prior  
17 proceeding. One of your objections in your notice  
18 of motion and grounds for assertive dismissal was  
19 the failure of Ms. Sassower to comply with the  
20 notice provision, the 20-day notice requirement of  
21 the filing of a notice of petition.

22 MS. HAMILTON: Yes, your Honor.

23 THE COURT: That is not a jurisdictional  
24 ground for dismissal. In the case law it's replete  
25 with instructions to the trial court that unless



Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1           there is prejudice, that that can be cured.

2                       So the return date on the notice of  
3           petition filed on June 24th is going to be changed  
4           right now to give your office ample time to  
5           respond. How much time does your office need to  
6           respond to the petition?

7                       MS. HAMILTON: 60 days, your Honor.

8                       THE COURT: It seems a little rich. Can  
9           we do more -- how about August 18th?

10                      MS. HAMILTON: Okay.

11                      THE COURT: If you need additional time  
12           you can request it on notice to Ms. Sassower.

13                      Ms. Sassower, you are required to file a  
14           summons with a plenary action. This is a hybrid  
15           action, an Article 78 proceeding in conjunction  
16           with a plenary action seeking declaratory relief.  
17           There is an outstanding motion to dismiss that  
18           portion of the proceedings seeking plenary relief  
19           based on your failure to file a summons.

20                      Do you intend to cure that defect by  
21           serving a summons, also making -- by  
22           serving a summons?

23                      MS. SASSOWER: I did, your Honor.

24                      THE COURT: You did in an exhibit to amend  
25           the petition in opposition papers.

1 MS. SASSOWER: I identified that  
2 notwithstanding what you are representing as law,  
3 there is no law that requires a summons in addition  
4 to a notice of petition. And I also identified  
5 that I inquired of the clerk of Albany County  
6 Supreme Court on that subject, and she informed me  
7 that the notice of petition was sufficient. I  
8 attested to that in my opposing affidavit which  
9 also tells you the law that a summons is not  
10 required.

11 Nonetheless, on June 28th, and <sup>it</sup> is  
12 reflected by Exhibit B, I served a summons. And my  
13 question to your Honor in the affidavit, the  
14 opposing affidavit in further support of the notice  
15 of petition, asked your Honor's guidance as to what  
16 you wished me to do.

17 THE COURT: So you served a summons on  
18 June 28th; is that correct?

19 MS. SASSOWER: You have the stamp of the  
20 attorney general's office.

21 THE COURT: All right. The court will  
22 issue a written decision with respect to the  
23 remainder of the motion to dismiss.

24 I'll tell you orally from the bench, I  
25 have reviewed the pleadings in their totality in

1 depth, and I do not find that they warrant  
2 dismissal based on a pleading defect and failure to  
3 comply with CPLR 3014. I find the pleadings  
4 adequately identify the ten separate causes of  
5 action and alleges facts in support thereof to put  
6 the respondents/defendants on notice of the claims  
7 asserted. I will issue a written decision with  
8 respect to that.

9 With respect to the application for  
10 provisional relief, it is denied.

11 MS. SASSOWER: What is the basis, your  
12 Honor?

13 THE COURT: Ms. Sassower, I'm going to ask  
14 you not to interrupt me.

15 A preliminary injunction is a drastic  
16 remedy which this court should be cautious to issue  
17 as both sides have addressed. The movant is  
18 required to demonstrate by clear and convincing  
19 evidence the likelihood of success on the merits,  
20 the danger of irreparable harm in the absence of  
21 provisional relief and the balancing of the  
22 equities in its favor.

23 The gravamen of the application before the  
24 court has to do with the legislative abolishment of  
25 the Judicial Commission on Public Ethics, known as

1 JCOPE --

2 MS. SASSOWER: Joint Commission.

3 THE COURT: Joint Commission, thank you.

4 -- as part of the 2022-23 budget. That  
5 commission was a creature of statute created by the  
6 legislature. The petitioner fails to identify any  
7 legal basis why the legislature cannot now abolish  
8 that same commission it created. While it  
9 certainly would be good public policy for the State  
10 of New York to have an ethics commission that is  
11 active and not dysfunctional and investigates, and  
12 timely investigates complaints made to it, there is  
13 no legal requirement for such a commission  
14 identified by the petitioner. Based on that, based  
15 on the fact that a new commission is to be  
16 appointed to substitute for JCOPE --

17 MS. SASSOWER: The enactment, your Honor,  
18 have you not read the papers? It seems like you  
19 have not read anything actually. You are paid over  
20 \$200,000 a year. You haven't read anything.

21 THE COURT: The court has read the papers,  
22 and does not find, while there are procedural  
23 irregularities alleged in connection with the  
24 drafting and enacting of the budget, the court does  
25 not find the petitioner's papers meet the high

1           burden of establishing grounds for injunctive  
2           relief in the form of the likelihood of success on  
3           the merits, nor has she demonstrated irreparable  
4           injury.

5                       While there may, and I say may because the  
6           court <sup>has</sup> ~~as~~ made no dispositive finding as to this  
7           fact, no operative ethics commission at present,  
8           petitioner has failed to identify the type of  
9           irreparable injury suffered to her particularly, as  
10          opposed to the public at large, if any, that would  
11          warrant granting the extreme remedy of a  
12          preliminary injunction at this time, to the extent  
13          that her petition has claims sounding in mandamus.  
14          That is an extraordinary remedy available in  
15          limited circumstances to compel the performance of  
16          a purely ministerial act, which does not allow the  
17          exercise of any official discretion. Clearly,  
18          policy and legislation involves discretion, and she  
19          fails to demonstrate her entitlement to injunctive  
20          relief here today under the theory of mandamus  
21          asserted in the petition. That constitutes the  
22          determination of the court.

23                      MS. SASSOWER: May I make an application,  
24           please?

25                      THE COURT: I'd like to supplement that.

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739] 32

1           One moment, Ms. Sassower.

2                   The court further finds no grounds for  
3           disqualification. That is an extraordinary remedy.  
4           The state law of New York requires the state  
5           attorney general to represent the state in all  
6           matters, and your allegation, without factual  
7           support, that disqualification is necessary would  
8           deprive the state of its statutory counsel here  
9           today.

10                   Finally, while there was no oral argument  
11           on this point, to the extent that the petitioner's  
12           papers seek removal to federal court, she filed the  
13           petition in state court. There are procedures  
14           under federal law seeking removal to a federal  
15           jurisdiction. You are certainly free to avail  
16           yourself to those procedures, but this court finds  
17           no grounds or lawful authority at this time to  
18           transfer the matter to federal court.

19                   MS. SASSOWER: I'd like to make an  
20           application. I'd like to put a statement on the  
21           record.

22                   THE COURT: Hold on a minute.

23                   In light of the foregoing, the court is  
24           going to sign the order to show cause, however is  
25           going to make the return date August 18th, the same

1 date as the date for respondents to file an answer  
2 and/or ~~return~~ <sup>respond</sup> to the petition. That way the court  
3 can address the substance of the allegations at one  
4 time in a procedurally more efficient manner.

5 Yes, Ms. Sassower.

6 MS. SASSOWER: Your decision is conclusory  
7 and false. Let us begin with your assertion that  
8 the attorney general is required to defend public  
9 officers sued, as here. You cited no provision of  
10 law when you defiantly said this is what ~~we~~ <sup>they</sup> are  
11 required to do to defend, and that my assertions to  
12 the contrary are groundless.

13 Apparently your Honor does not read the  
14 papers, and is not familiar with Executive Law  
15 63.1. 63.1 predicates the posture of the attorney  
16 general on the interest of the state. The attorney  
17 general can either defend or prosecute, depending  
18 upon the interest of the state. Where there is no  
19 legitimate defense, as here, there is no legitimate  
20 defense, only deceit and lies, which is why  
21 Ms. Hamilton has engaged in the performance that  
22 she has here, making statements that you should have  
23 ripped into her about, castigated her, held her in  
24 contempt for brazenly misrepresenting the record  
25 and what is before you. Instead you accepted it.



Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703,739]

1                                    I                                    to be  
2                                    ^                                    ^  
The dismissal motion established ~~was~~ frivolous,  
fraudulent.

3                                    THE COURT:    Ms. Sassower, excuse me one  
4                                    moment.

5                                    Ms. Hamilton, do you acknowledge service  
6                                    of the order to show cause?

7                                    MS. HAMILTON:    The one that was e-filed at  
8                                    midnight last night?

9                                    THE COURT:    Yes.

10                                   MS. HAMILTON:    I admit it was e-filed,  
11                                   yes.    Service was not made on any of the defendants  
12                                   named in the action, other than it was an e-filed  
13                                   case.    None of the defendants were served.

14                                   THE COURT:    Do you accept service on  
15                                   behalf of your clients now?

16                                   MS. HAMILTON:    We don't accept waiver of  
17                                   service.

18                                   MS. SASSOWER:    They are represented by the  
19                                   attorney general.    They appear for all the  
20                                   defendants.

21                                   THE COURT:    Excuse me, Ms. Sassower.

22                                   MS. SASSOWER:    What is she talking about?

23                                   THE COURT:    Would you prefer to litigate  
24                                   this motion prior to litigating the substance of  
25                                   the petition?



Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703,739]

1 MS. HAMILTON: This motion being our  
2 pending motion to dismiss?

3 THE COURT: No, the pending order to show  
4 cause we are addressing at present.

5 MS. HAMILTON: Can you repeat your  
6 question, your Honor?

7 THE COURT: Would you prefer to address  
8 this motion at a separate and prior time to the  
9 petition?

10 MS. HAMILTON: I understand, your Honor.  
11 We acknowledge service on behalf of the defendants  
12 for purposes of this order to show cause in this  
13 proceeding.

14 THE COURT: Thank you. Note I'll make  
15 that application returnable August 18th, with reply  
16 papers being September 2nd. For clarity, that is  
17 also the return date of the petition.

18 MS. SASSOWER: Your Honor --

19 THE COURT: Excuse me, Ms. Sassower. You  
20 have my ruling.

21 MS. SASSOWER: Well, you asked her how  
22 much time she needed. The attorney general's  
23 office has 500 plus attorneys. You didn't ask me  
24 how much time a non-lawyer would like to respond.

25 THE COURT: How much time would you like

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

36

1 to respond?

2 MS. SASSOWER: You have given me how much?

3 THE COURT: 15 days.

4 MS. SASSOWER: Why don't you give <sup>me</sup> an  
5 equivalent <sup>amount of time</sup> to the attorney general, and if I can  
6 submit it earlier, I will surely do.

7 THE COURT: The court is not going to  
8 adjudicate until the return date. What date do you  
9 want?

10 MS. SASSOWER: You gave her how much time,  
11 six weeks?

12 THE COURT: I gave her until August 18th.

13 MS. SASSOWER: All right, give me until  
14 September 18th.

15 THE COURT: That's a Sunday. How about  
16 the 19th?

17 MS. SASSOWER: All right.

18 THE COURT: All right, thank you both. I  
19 will upload a signed copy of the order to show  
20 cause. I will upload a copy of the decision and  
21 order on the motion to dismiss. And we'll look for  
22 your papers, Ms. Hamilton, on or before August  
23 18th, and your reply by September 18th. The matter  
24 will be considered fully submitted as of that date.

25 MS. HAMILTON: Thank you, your Honor.

Ex. C to Petitioners' Sept. 15, 2022 Affidavit: transcript of July 7, 2022 oral argument [R.703-739]

1 THE COURT: Thank you.

2 MS. SASSOWER: You have no evidence on  
3 which to deny the TRO. We'll be back with the  
4 granting of the sixth cause of action, and the  
5 other causes of action to which they have no  
6 defense, summary judgment on every cause of action.  
7 Thank you, your Honor.

8 (WHEREUPON THE PROCEEDINGS WERE CONCLUDED.)  
9

10 Certified to be a true and accurate transcript.

11 Barbara VanBlarcum

12 BARBARA VAN BLARCUM  
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Ex. D to Petitioners' Sept. 15, 2022 Affidavit:  
September 15, 2022 CPLR §3210 Notice for Discovery & Inspection

***SEE:* R.662-663**

Petitioners' Sept. 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment [R.741-744]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

**Oral Argument Requested**

**September 15, 2022**  
**Notice of Motion for Sanctions,**  
**Disqualification of AG,**  
**Summary Judgment, &**  
**Other Relief**

Petitioners/Plaintiffs,

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
S I R S :

PLEASE TAKE NOTICE that upon the September 15, 2022 affidavit of the unrepresented individual petitioner Elena Ruth Sassower in opposition to respondents' August 18, 2022 cross-motion, the analysis and other exhibits thereto, and upon petitioners' memorandum of law in support of this motion and all papers and proceedings heretofore had, a motion will be made at Ulster

Petitioners' Sept. 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment [R.741-744]

County Supreme Court, 285 Wall Street, Kingston, New York 12401, on Thursday, October 6, 2022,  
at 1:00 p.m., for an order:

1. pursuant to 22 NYCRR §130-1.1 *et seq.*, imposing costs and maximum sanctions upon Respondent Attorney General Letitia James, her culpable attorney staff, and culpable respondents for their August 18, 2022 dismissal cross-motion and June 27, 2022 dismissal motion, signed by “of Counsel” Assistant Attorney General Gregory Rodriguez, Esq.— both not merely frivolous, but frauds on the Court;
2. pursuant to Judiciary Law §487(1), making such determination as would afford petitioners treble damages in a civil action against Respondent Attorney General James, her culpable attorney staff, and culpable respondents based on their August 18, 2022 dismissal cross-motion, June 27, 2022 dismissal motion, and, additionally, the fraud committed, on their behalf, by Assistant Attorney General Stacey Hamilton by her July 7, 2022 oral argument in opposition to petitioners’ order to show cause for a TRO/preliminary injunction;
3. pursuant to 22 NYCRR §100.3D(2), referring Respondent Attorney General James, her culpable attorney staff, and culpable respondents to:
  - (a) appropriate disciplinary authorities for their knowing and deliberate violations of New York’s Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 “Non-Meritorious Claims and Contentions”; Rule 3.3 “Conduct Before A Tribunal”; Rule 8.4 “Misconduct”; Rule 5.1 “Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers”; and Rule 5.2 “Responsibilities of a Subordinate Lawyer”;
  - (b) appropriate criminal authorities for their Judiciary Law §487 “misdemeanor”, and for their knowing and deliberate violations of penal laws, including, Penal Law §496 “corrupting the government”; Penal Law §195 “official misconduct”; Penal Law §175.35 “offering a false instrument for filing in the first degree”; Penal Law §195.20 “defrauding the government”; Penal Law §190.65: “scheme to defraud in the first degree”; Penal Law §155.42 “grand larceny in the first degree”; Penal Law §105.15 “conspiracy in the second degree; Penal Law §20 “criminal liability for conduct of another”;
4. pursuant to Executive Law §63.1 and Rule 1.7 of the New York Rules of Professional Conduct proscribing conflicts of interest, disqualifying Respondent Attorney General James from representing her co-respondents and requiring appointment of independent, outside counsel to determine “the interest of the state” pursuant to Executive Law §63.1 – and petitioners’ entitlement to representation;

## Petitioners' Sept. 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment [R.741-744]

5. pursuant to CPLR §3211(c), granting summary judgment to petitioners on the ten causes of action of their June 6, 2022 verified petition/complaint and September 1, 2022 verified amendment thereto – starting with the sixth cause of action for a declaration that the “ethics commission reform act of 2022” is unconstitutional, unlawful and void, as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw;
6. pursuant to CPLR §2214(c), directing respondents to furnish the Court with the papers specified by petitioners’ June 28, 2022 notice and September 3, 2022 notice – or, alternatively, pursuant to CPLR §3124, compelling respondents’ compliance to those same two notices, as embodied by petitioners’ September 15, 2022 notice for production and inspection pursuant to CPLR §3120;
7. for such other and further relief as may be just and proper and, particularly, if the foregoing is denied:
  - (a) disclosure by the Court, pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner’s July 6, 2022 affidavit in support of their order to show cause, and further manifested by the Court’s oral decision at the July 7, 2022 argument of petitioners’ order to show cause for a TRO/preliminary injunction;
  - (b) transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: “The United States shall guarantee every State in this Union a Republican Form of Government”, inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and “rule of necessity” cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on petitioners seven days before the return date, *to wit*, September 29, 2022.

Dated: White Plains, New York  
September 15, 2022

Petitioners' Sept. 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment [R.741-744]



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

10 Stewart Place, Apartment 2D-E  
White Plains, New York 10603  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)

TO: Attorney General Letitia James  
The Capitol  
Albany, New York 12224-0341

ATT: Assistant Attorney General Gregory Rodriguez



Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Petitioners/Plaintiffs,

-against-

**Index #904235-22**

**September 15, 2022**

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

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

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

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

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

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

Respondents/Defendants.

-----X  
**PETITIONERS' MEMORANDUM OF LAW**  
**in Support of Sanctions against Respondent Attorney General Letitia James,**  
**Culpable Attorneys of the Office of the Attorney General,**  
**and Respondents for their Litigation Fraud,**  
**Disqualification of the Attorney General,**  
**Summary Judgment, & Other Relief**

ELENA RUTH SASSOWER, Unrepresented Petitioner/Plaintiff,  
10 Stewart Place, Apartment 2D-E  
White Plains, New York 10603  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)

Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

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Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]**INTRODUCTION**

This memorandum of law (#94) is submitted in support of the seven branches of relief sought by petitioners' September 15, 2022 notice of motion (#93). It is based on the litigation fraud committed by Respondent Attorney General Letitia James, in defending herself and her nine co-respondents against the June 6, 2022 verified petition ([#1](#)) to which she has no legitimate defense to any of its ten causes of action and in which she is personally and financially interested.

Appearing "of Counsel" for Respondent Attorney General James is Assistant Attorney General Gregory Rodriguez.

The facts giving rise to this motion are particularized by:

- (1) [petitioners' analysis of AAG Rodriguez' August 18, 2022 cross-motion to dismiss the petition \(#88\)](#) – which is Exhibit A to petitioners' September 15, 2022 affidavit in opposition to the cross-motion ([#87](#));
- (2) [petitioners' June 28, 2022 affidavit in opposition to AAG Rodriguez' June 27, 2022 motion to dismiss the petition \(#61\)](#); and
- (3) [the transcript of the July 7, 2022 oral argument of petitioners' order to show cause for a TRO/preliminary injunction \(#91\)](#), e-mailed to AAG Rodriguez, with notice prior thereto of the litigation fraud committed by his colleague Assistant Attorney General Stacey Hamilton ([#89](#), [#90](#)) – which are Exhibits C and B-1/B-2, respectively, to petitioners' aforesaid September 15, 2022 affidavit.

\* \* \*

**Petitioners' First Branch of Relief:**  
**Costs & Sanctions Pursuant to 22 NYCRR §130-1.1**

[NYCRR §130-1.1](#) provides for costs and sanctions against a party or his attorney for "frivolous" conduct in "Every pleading, written motion, or other paper" he has signed.

§130-1.1(c) defines conduct as "frivolous" if:

- "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

- (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- (3) it asserts material factual statements that are false.”

AAG Rodriguez’ August 18, 2022 dismissal cross-motion (##79-83) meets the test for frivolousness on all three counts. As demonstrated by petitioners’ analysis, he has brazenly disregarded the most fundamental legal standards in crafting the cross-motion. Fashioned on fraud and deceit throughout, it is “completely without merit in law”, chocked with “material factual statements that are false”, and intended to “delay or prolong the resolution of the litigation or maliciously injure [the petitioners herein]”. The same is true of his June 27, 2022 dismissal motion (##50-59), as detailed by petitioners’ June 28, 2022 affidavit in opposition thereto. So, too, AAG Hamilton’s performance at the July 7, 2022 oral argument, excepting that such was not committed *via* a signed paper.

Likewise, the affidavit of JCOPE’s director of investigations and enforcement Emily Logue and the affirmation of OIG case management unit director Leslie Arp (#81, #82), accompanying AAG Rodriguez’ cross-motion – whose perjury is highlighted by the analysis and further reinforced by petitioners’ September 3, 2022 CPLR §2214(c) notice to furnish papers to the Court ([#85](#)).

§130-1.1(b) states:

“Where the award or sanction is against an attorney, it may be against the attorney personally or upon a partnership, firm,...government agency...with which the attorney is associated and that has appeared as attorney of record. The award or sanctions may be imposed upon any attorney appearing in the action or upon a partnership, firm...with which the attorney is associated.”

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

Pursuant to §130-1.2, sanctions of up to \$10,000 may be imposed for “any single occurrence of frivolous conduct”. Unlike costs, which are payable to the party or attorney making the motion, sanctions are reimbursement to the state, pursuant to §130-1.3, as follows:

“Payments of sanctions by an attorney shall be deposited with the Lawyers’ Fund for Client Protection established pursuant to section 97-t of the State Finance Law. Payments of sanctions by a party who is not an attorney shall be deposited with the clerk of the court for transmittal to the Commissioner of Taxation and Finance. The court shall give notice to the Lawyers’ Fund of awards of sanctions payable to the fund by sending a copy of the order awarding sanctions, or by sending other appropriate notice, to the Lawyers’ Fund for Client Protection...”

At bar, the state is entitled to maximum sanctions for the “occurrence[s]” of “frivolous” signed papers by AAG Rodriguez, Ms. Logue, Ms. Arp – and petitioners are entitled to such costs as they can recover.

**Petitioners’ Second Branch of Relief:**  
**Referral of the Misdemeanor to Criminal Authorities**  
**& Treble Damages under Judiciary Law §487**

Judiciary Law §487, “Misconduct by attorneys”, states, in pertinent part:

“An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party;

...

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.”

In Amalfitano v. Rosenberg, 12 NY3d 8, 14 (2009), the Court of Appeals recognized that “the evident intent” of Judiciary Law §487 is “to enforce an attorney’s special obligation to protect the integrity of the court and its truth-seeking function”. The New York attorney having the greatest “special obligation” is the New York State Attorney General. As such, Judiciary Law §487 is especially appropriate to the situation at bar – mandating referral of Respondent Attorney General James, colluding staff attorneys, attorney-respondents and their culpable attorney staff to

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

criminal authorities for the “misdemeanor” of deceit and intending to deceive the Court and petitioners. So, too, must they be made to pay “treble damages” to petitioners, recoverable through a civil action – and reinforcing the Court’s duty to render an appropriate adjudication to facilitate same is the fact that the legislative respondents have cynically not created the fund that State Finance Law §123-g identifies was to be established under State Finance Law §123-h by which petitioners could be reimbursed for litigation costs and expenses of this meritorious citizen-taxpayer actions.<sup>1</sup>

**Petitioners’ Third Branch of Relief:**  
**“Appropriate Action” Pursuant to §100.3D**  
**of the Chief Administrator’s Rules Governing Judicial Conduct**

[Part 100 of the Chief Administrator’s Rules Governing Judicial Conduct](#) are designed to ensure the integrity of judicial proceedings. Part 100.3D entitled “Disciplinary Responsibilities” states, in mandatory language:

“(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.” (underlining added).

[New York’s Rules of Professional Conduct](#), promulgated as joint rules of the Appellate Divisions of the Supreme Court, are Part 1200 of Title 22 of New York Codes, Rules and

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<sup>1</sup> State Finance Law §123-g, entitled “Costs and fees”, states:

“1. The court shall have the authority to fix a reasonable sum to reimburse the plaintiff for costs and expenses, including attorney fees in an action wherein judgment was rendered for the plaintiff. Such attorney fees shall only be paid from the fund established under section one hundred twenty-three-h of this article to the extent of money available therein.

2. No intervenors, unless they are necessary parties, shall be awarded attorney fees.”

There is no State Finance Law §123-h.

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

Regulations. Particularly relevant is the Code's definition section, which specifies "fraud" as involving:

"scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another" (1200.1(I)).

It also defines "law firm" to include "a government law office".

Rule 3.1, entitled "Non-Meritorious Claims and Contentions", states:

"a lawyer shall not...defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...". (subsection a).

The definition of "frivolous" is the same as that under 22 NYCRR §130.1.1(c) and includes "knowingly assert[ing] material factual statements that are false" (subsection b(3)).

Rule 3.3, entitled "Conduct Before a Tribunal", states:

- (a) A lawyer shall not knowingly:
- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
  - (2) fail to disclose to the tribunal controlling legal authority known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
  - (3) offer or use evidence that the lawyer knows to be false. or use evidence that the lawyer knows to be false. If a lawyer...has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal...

Rule 8.4, entitled "Misconduct", states:

"A lawyer or law firm shall not:

- (a) violate or attempt to violate the Rules of Professional Conduct...

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.”

Rule 5.1 is entitled “Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers” and states:

“(a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.

(b)(1) A lawyer with management responsibilities in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.

(2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.

(c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate...

(d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:

- (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or
- (2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and
  - (i) knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or
  - (ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.”

As demonstrated by petitioners’ analysis of AAG Rodriguez’ August 18, 2022 cross-motion and, prior thereto, by their opposition to his June 27, 2022 dismissal motion, and then by



## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

the transcript of AAG Hamilton's oral advocacy on July 7, 2022, objected to then and thereafter by petitioner Sassower, and by petitioners' September 3, 2022 CPLR §2214(c) notice pertaining to Ms. Logue's affidavit and Ms. Logue's affirmation, there has been a continuum of flagrant violations of the Rules of Professional Conduct and, specifically, Rule 3.1, Rule 3.3, Rule 8.4, and Rule 5.1.

Pursuant to §100.3D(2) of the Chief Administrator's Rules Governing Judicial Conduct, "appropriate action" would include referrals to New York's attorney grievance committees, if not criminal authorities – and this is consistent with the Court of Appeals' unequivocal directive:

"the courts are charged with the responsibility of insisting that lawyers exercise the highest standards of ethical conduct... Conduct that tends to reflect adversely on the legal profession as a whole and to undermine public confidence in it warrants disciplinary action (*see Matter of Holtzman*, 78 NY2d 184, 191 cert denied, \_\_\_ US \_\_\_, 112 S.Ct 648; *Matter of Nixon*, 53 AD2d 178, 181-182; *cf.*, *Matter of Mitchell*, 40 NY2d 153, 156).", *Matter of Rowe*, 80 NY2d 336, 340 (1992).<sup>2</sup>

**Petitioners' Fourth Branch of Relief:**  
**Disqualification of Attorney General James**  
**Pursuant to Executive Law §63.1**  
**and Rule 1.7 of the New York Rules of Professional Conduct**

[Executive Law §63.1](#) identifies that the Attorney General's litigation position is contingent on "the interest of the state". It reads as follows:

"The attorney-general shall:

1. Prosecute and defend all actions and proceedings in which the state is interested, and have charge and control of all the legal business of the departments and bureaus of the state, or of any office thereof which requires the services of attorney or counsel, in order to protect the interest of the state, but this section shall not apply to any of the military department bureaus or military offices of the state. No action or proceeding affecting the property or interests of the state shall be instituted, defended or conducted by any department, bureau, board, council, officer, agency or instrumentality of the

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<sup>2</sup> "A court cannot countenance actions, on the part of an attorney, which are unethical and in violation of the attorney's Canon on Ethics... A court cannot stand idly by and allow a violation of law or ethics to take place before it.", *People v. Gelbman*, 568 N.Y.S2d 867, 868 (Just. Ct. 1991).

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state, without a notice to the attorney-general apprising him of the said action or proceeding, the nature and purpose thereof, so that he may participate or join therein if in his opinion the interests of the state so warrant.” (underlining added).

[State Finance Law Article 7-A](#) also contemplates the Attorney General’s affirmative role in safeguarding against “wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property” (§123-b) – including as plaintiff:

§123-a defines “person” to include “the attorney general” and he is the only “person” so-specified;

§123-c(3) states “Where the plaintiff in such action is a person other than the attorney general, a copy of the summons and complaint shall be served upon the attorney general.”

§123-d states that costs and security “shall not apply to any action commenced by the attorney general in the name of and on behalf of the people of the state.”

§123-e(2) states that “upon application by the plaintiff or the attorney general on behalf of the people of the state” a preliminary injunction and TRO may be granted.

The Attorney General’s duty is thus not to provide knee-jerk defense, but to determine “the interest of the state”. Where there is no legitimate defense to a lawsuit, the Attorney General’s obligation is not to defend, but to intervene and/or represent the plaintiff so as to uphold “the interest of the state”.

Certainly, if Attorney General James had any legitimate defense to the petition, AAG Rodriguez would not have engaged in the litigation fraud he has by his August 18, 2022 dismissal cross-motion – and his prior June 27, 2022 dismissal motion. Nor would AAG Stacey Hamilton have done the same at the July 7, 2022 oral argument of petitioners’ order to show cause for a TRO/preliminary injunction.

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

AAG Rodriguez has not identified who in the Attorney General's office independently evaluated "the interest of the state", nor addressed the Attorney General's duty, consistent therewith, which is here to be representing/intervening on behalf of petitioners, acting as private attorneys general. Nor has he confronted that Attorney General James is a named respondent, with direct interests, including financial, in all the causes of action arising from and directly attributable to, [her litigation fraud in the CJA v. Cuomo...DiFiore citizen-taxpayer action](#) – the subject of petitioners' March 5, 2021 complaint against Attorney General James to JCOPE ([#10](#)) and its incorporated February 11, 2021 attorney misconduct complaint against her to New York's attorney grievance committees ([#11](#)). The importance of this was highlighted by petitioners' June 23, 2022 notice of petition ([#46](#)), by their order to show cause that the Court signed, as amended, on July 8, 2022 ([#75](#)), and at the July 7, 2022 oral argument ([#92](#) at pp. 4, 11, 22, 25, 32-34) – and the only response from AAG Rodriguez, by his cross-motion, is concealment thereof.

In *Greene v. Greene*, 47 NY2d 447, 451 (1979), the Court of Appeals articulated key principles governing attorney disqualification for conflict of interest – the situation at bar where Attorney General James, in addition to representing herself, represents both the respondent "public protection"/ethics entities and respondent public officers who, like herself, is under their jurisdiction:

"It is a long-standing precept of the legal profession that an attorney is duty bound to pursue his client's interests diligently and vigorously within the limits of the law (Code of Professional Responsibility, canon 7). For this reason, a lawyer may not undertake representation where his independent professional judgment is likely to be impaired by extraneous considerations. Thus, attorneys historically have been strictly forbidden from placing themselves in a position where they must advance, or even appear to advance, conflicting interests (see, e.g., *Cardinale v Golinello*, 43 NY2d 288, 296; *Eisemann v Hazard*, 218 NY 155, 159; Code of Professional Responsibility, DR 5-105). This prohibition was designed to safeguard against not only violation of the duty of loyalty owed the client, but also against abuse of the adversary system and resulting harm to the public at large.

Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

...where it is the lawyer who possesses personal, business or financial interest at odds with that of his client, these prohibitions apply with equal force (Code of Professional Responsibility, DR 5-101, subd [A]). Viewed from the standpoint of a client, as well as that of society, it would be egregious to permit an attorney to act on behalf of the client in an action where the attorney has a direct interest in the subject matter of the suit. ...the conflict is too substantial, and the possibility of adverse impact upon the client and the adversary system too great, to allow the representation.”

The former DR 5-101 is now reflected in Rule 1.7 of New York’s Rules of Professional Conduct. Rule 1.7(a)(2) bars a lawyer from representing a client if:

“there is a significant risk that the lawyer’s professional judgment on behalf of a client will be adversely affected by the lawyer’s own financial, business, property, or other personal interests.”<sup>3</sup>

Such “significant risk” is more than here present, established by petitioners’ March 5, 2021 complaint against Attorney General James to JCOPE and compounded by the fact that her preeminent duty of representation is not to her co-respondents who she has heretofore protected, but to the state.<sup>4</sup>

**Petitioners’ Fifth Branch of Relief:**  
**Compelling Respondents’ Compliance with Petitioners’ Notices**  
**to Furnish Papers to the Court Pursuant to §2214(c)**  
**or, Alternatively, Pursuant to CPLR §3124**

CPLR §2214(c) requires parties to furnish the Court with all “papers...necessary to the consideration of the questions involved” on the hearing of motions. Pursuant thereto, petitioners served upon respondents a June 28, 2022 notice ([#60](#)), specifying the papers that respondents were to furnish the Court on the hearing of their June 23, 2022 notice of petition. They additionally

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<sup>3</sup> Such is permitted under Rule 1.7(b) only if, *inter alia*, “(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client”; and “(4) each affected client gives informed consent, confirmed in writing”.

<sup>4</sup> Where there is “a conflict of duties, the attorney general’s primary obligation is to the body politic rather than to its officers, departments, commissions, or agencies.”, 7 Am. Jur. 2d §12.

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

made it an exhibit to their June 28, 2022 opposition affidavit to AAG Rodriguez' June 27, 2022 dismissal motion ([#64](#)) – and then reiterated this CPLR §2214(c) notice in their order to show cause, which the Court signed on July 8, 2022 ([#75](#)). Petitioners' July 6, 2022 moving affidavit ([#67](#) at ¶4), in support of the order to show cause quoted the concluding paragraph of the June 28, 2022 notice, as to the consequences of failing to comply with the CPLR §2214(c) notice, as follows:

“PLEASE ADDITIONALLY TAKE NOTICE that your failure to make such production will entitle petitioners [to] the granting of the relief sought by their June 23, 2022 notice of petition, starting [with] the requested TRO, preliminary injunction, and declaration that Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill S.8006-C/A.9006-C – the ‘ethics commission reform act of 2022’ – is unconstitutional, unlawful, and void as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw.<sup>fn4</sup>”

Without the slightest explanation, respondents furnished none of the requested “papers” at the July 7, 2022 oral argument of petitioners’ order to show cause. Nor did they furnish the requested “papers” on the August 18, 2022 date that the Court set for their responses to the notice of petition and order to show cause. AAG Rodriguez’ August 18, 2022 cross-motion conceals the very existence of the CPLR §2214(c) notice.

Although the rule is that “where an adversary withholds evidence in his possession or control that would be likely to support his version of the case, the strongest inferences may be drawn against him which the opposing evidence in the record permits”, *Noce v. Kaufman*, 2 NY2d

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<sup>fn4</sup> See, *inter alia*, [New York State Bankers Association, Inc. et al. v. Wetzler, as Commissioner of the Department of Taxation and Finance of the State of New York](#), 81 NY2d 98, 102 (1993) ‘The question concerns not what was enacted or its effect on the budgetary process, but whether there was authority to enact the provision at all. Our precedents clearly compel the conclusion that the controversy is justiciable...’”

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

347, 353 (1957),<sup>5</sup> petitioners are entitled to more than “strongest inferences”. They are entitled to the actual evidence that has been entirely unaccounted-for. They, therefore, request a court order compelling respondents to furnish the “papers” sought by their June 28, 2022 CPLR §2214(c) notice – all in respondents’ custody and control. Likewise, a court order to compel respondents’ compliance with petitioners’ September 3, 2022 CPLR §2214(c) notice for additional “papers” in respondents’ custody and control ([#85](#))– these arising from the perjurious affidavit of Ms. Logue and affirmation of Ms. Arp that AAG Rodriguez has used to support his cross-motion.

As CPLR §3124 provides a party with a statutory means to compel production by motion, petitioners have embodied their two CPLR §2214(c) notices into a September 15, 2022 notice for discovery and inspection pursuant to CPLR §3120 ([#86](#)), so as to avail themselves of that provision.

**Petitioners’ Sixth Branch of Relief:**  
**Summary Judgment to Petitioners Pursuant to §3211(c)**

CPLR §3211(c), entitled “Evidence permitted; immediate trial, motion treated as one for summary judgment”, reads as follows:

“Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment. Whether or not issue has been joined, the court, after adequate notice to the parties, may treat the motion as a motion for summary judgment. The court may, when appropriate for the expeditious disposition of the controversy, order immediate trial of the issues raised on the motion.”

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<sup>5</sup> Cited by 57 NY Jurisprudence 2<sup>nd</sup> §125 “Presumptions as to nonproduction, suppression, or fabrication of evidence, generally”; §126 “Presumption based on failure to produce books, documents, or articles.” See, also, Corpus Juris Secundum, Volume 31A (1996): §167 “Suppression or Withholding of Evidence”, §168: “Nonproduction of Documents or Other Real Evidence”; Richardson, Evidence § 92 [Prince 10th ed]; Prince, Richardson on Evidence §3-139 “Withholding Evidence-In General”.

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

Pursuant to CPLR §105(u), “A ‘verified pleading’ may be utilized as an affidavit whenever the latter is required.”<sup>6</sup>

The allegations of petitioners’ June 6, 2022 verified petition/complaint are all presumed true on a CPLR §3211(a)(7) motion – and AAG Rodriguez, who has concealed ALL of the petition’s particularized allegations and the dispositive nature of its exhibits by his unsworn memorandum of law, has also furnished NO rebutting “documentary evidence”, notwithstanding his cross-motion invokes CPLR §3211(a)(1). Instead, he has offered up an August 18, 2022 dismissal cross-motion that is fraudulent and deceitful throughout – and so-demonstrated by petitioners’ analysis thereof, with recitation of the applicable legal principle:

“when a litigating party resorts to falsehood or other fraud in trying to establish a position, a court may conclude that position to be without merit and that the relevant facts are contrary to those asserted by the party.” Corpus Juris Secundum, Vol 31A, 166 (1996 ed., p. 339);

“It has always been understood – the inference, indeed, is one of the simplest in human experience – that a party’s falsehood or other fraud in the preparation and presentation of his cause...and all similar conduct, is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and that from that consciousness may be inferred the fact itself of the cause’s lack of truth and merit. The inference thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause.” II John Henry Wigmore, Evidence §278 at 133 (1979).

All treatise and caselaw authority is to the same effect, reinforcing petitioners’ entitlement to summary judgment on their ten causes of action, as well as to the “other and further relief” of their June 23, 2022 notice of petition, *as a matter of law*.

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<sup>6</sup> 2 Carmody-Wait 2d §4:12 “a sworn complaint may be regarded as an affidavit.”

Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

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

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

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

“14. The Court's duty, in response to this order to show cause, is to furnish such other explanation as it has – and, in any event, to make disclosure, pursuant to [§100.3F of the Chief Administrator's Rules Governing Judicial Conduct](#), of its financial and other interests.

15. Disclosure is especially requisite if the Court refuses to disqualify itself, based on the appearance and actuality of its interest and bias, refuses to confront its lack of jurisdiction arising from interest proscribed by [Judiciary Law §14](#), and refuses to address the additional threshold relief sought, with disclosure, by this order to show cause's branch of ‘other and further relief as may be just and proper’...

16. Suffice to say that notwithstanding the Court's absence of jurisdiction, by reason of its proscribed Judiciary Law §14 interest, its *matter of law* granting of TRO/preliminary injunctive relief is a ministerial act – a ‘housekeeping’ task, preserving the *status quo*, comparable to the Court's ability to make an order transferring/removing the case to federal court, or certifying the question to the Appellate Division, Third Department or the New York Court of Appeals, both sought by the June 23<sup>rd</sup> notice of petition, as here on this order to show cause.” (hyperlinking in the original).

[Judiciary Law §14](#) entitled “Disqualification of judge by reason of interest or consanguinity” reads, in pertinent part:

“A judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney



## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

or counsel, or in which he is interested, or if he is related by consanguinity or affinity to any party to the controversy within the sixth degree. ...”

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

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

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<sup>fn5</sup> See Appellate Division, Third Department’s decision in *People v. Alteri*, [47 A.D.3d 1070 \(2008\)](#), stating:

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

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

‘Section 14 of the Judiciary Law... is the sole statutory authority in New York for disqualification of a Judge. If disqualification under the statute were found, prohibition would lie, since there would be a lack of jurisdiction. There is an express statutory disqualification. (See *Matter of Merola v. Walsh*, 75 AD2d 163; *Matter of Katz v. Denzer*, 70 AD2d 548; *People ex rel., Devery v. Jerome*, 36 Misc 2d 256.)’ (underlining added).

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

## Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

– as to which ‘rule of necessity’ cannot be invoked, because such is predicated on jurisdiction that Judiciary §14 divests from interested judges.<sup>fn6</sup>

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

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

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

*“A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...”*, italics added by Appellate Division, First Department in *Matter of Capshaw*, 258 AD 470, 485 (1940), quoting

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<sup>fn6</sup> See 32 New York Jurisprudence §45 (1963), ‘Disqualification as yielding to necessity’:

‘...since the courts have declared that the disqualification of a judge for any of the statutory reasons deprives him of jurisdiction,<sup>fn</sup> a serious doubt exists as to the applicability of the necessity rule where the judge is disqualified under the statute.<sup>fn</sup>’

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

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

Petitioners' Sept. 15, 2023 Memorandum of Law in Support of Motion [R.745-763]

from *Matter of Droege*, 129 AD 866 (1<sup>st</sup> Dept. 1909).

"A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another..." *Matter of Bolie*, 97 AD 551, 568 (1<sup>st</sup> Dept. 1904).

"...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe." (at 574).

### CONCLUSION

Based on the foregoing, the Court's duty, for which it is paid by the People of New York, is to grant, in its entirety, the relief sought by petitioners' accompanying September 15, 2022 notice of motion, so that justice may be done for the People of New York, consistent with the evidentiary facts and the law arising therefrom.



ELENA RUTH SASSOWER, Unrepresented Petitioner,  
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

September 15, 2022

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

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September 19, 2022

Supreme Court Justice David M. Gandin  
Ulster County Supreme Court  
285 Wall Street  
Kingston, New York 12401

RE: Center for Judicial Accountability, Inc., et al. v. JCOPE, et al. (#904235-22)

(1) This Court's individual rules pertaining to page limits on motions conflicts with, and subverts, the Uniform Civil Rules for the Supreme Court & the County Court (22 NYCRR §202.8-b)

(2) petitioners' word-count certifications

Dear Justice Gandin:

This follows up my phone conversation with your secretary, Tara Buhl, on Friday, September 16, 2022.

[22 NYCRR §202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court](#) entitled "Length of Papers" states:

"(a) Where prepared by use of a computer, unless otherwise permitted by the court:

(i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each;

(b) For purposes of paragraph (a) above, the word count shall exclude the caption, table of contents, table of authorities, and signature block."

It was with knowledge of this that I drafted, finalized, and filed petitioners' September 15, 2022 memorandum of law ([#94](#)) in support of petitioners' September 15, 2022 notice of motion for sanctions, disqualification of Attorney General Letitia James, summary judgment, & other relief ([#93](#)). The memorandum of law's word count is 5,696, including the signature block.

Only thereafter, upon revisiting [this Court's rules](#) so as to review its requirement that hard copies be furnished to the Court did I see that the Court has a rule, pertaining to motions, stating: "Memoranda of law, affirmations and affidavits may not exceed ten (10) pages without prior Court authorization" and making no distinction for whether they are "in chief" or "reply".

I respectfully submit that the Court must strike and remove such individual rule, as it is unauthorized by the Uniform Rules, which it subverts.

Supreme Court Justice Gandin

Page Two

September 19, 2022

Although Uniform Rule §208.8-b(f) empowers judges to increase size limits, upon oral or written application of the parties, there is no provision for judges to decrease same by their own individual rules, which is what the Court has done by substituting page limits for word counts, notwithstanding page limits are only applicable to typewritten or handwritten submissions pursuant to Uniform Rule §§208.8-b(d) and (e). Moreover, in those situations, the page limit for “affidavits, affirmations, briefs and memoranda of law in chief” is “20 pages each”.

Consequently, and contrary to what I discussed with Ms. Buhl in calling the Court on September 16<sup>th</sup>, petitioners do not require the Court’s permission for their 5,696-word, 17-page memorandum of law in chief.

However, assuming that the certification requirement of Uniform Rule §208.8-b(c) applies to unrepresented parties – not just counsel – I should have appended a 5,696-word certification to the end of petitioners’ September 15, 2022 memorandum of law. Likewise, I should have appended a 1,549-word certification to the end of my September 15, 2022 affidavit in opposition to AAG Rodriguez’ August 18, 2022 cross-motion ([#87](#)); and, prior thereto, a 2,629-word certification to the end of my July 6, 2022 moving affidavit in support of the order to show cause for a TRO/preliminary injunction ([#67](#)).

Such three certifications are enclosed with this letter, with apologies for their omission, if, in fact, they were required to be included.

Thank you.

s/

ELENA RUTH SASSOWER,  
unrepresented individual petitioner/plaintiff

Enclosures

cc: AAG Gregory Rodriguez

AG's Sept. 20, 2022 Letter to Justice Gandin, Granted September 21 [R.766]

Request granted

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

Hon. David M. Gandin, JSC

LETITIA JAMES  
ATTORNEY GENERALDIVISION OF STATE COUNSEL  
LITIGATION BUREAU

September 20, 2022

Hon. David Gandin  
Supreme Court Justice  
Ulster County Courthouse  
285 Wall Street  
Kingston, NY 12401Re: *Center for Judicial Accountability, Inc. et al. v. New York State Commission on Public Ethics, et al.*; 904235-22 (Sup. Ct. Albany Cty.)

Dear Judge Gandin:

I write at this time on behalf of Respondents to request permission to file our Reply on September 29, 2022 regarding our previously filed cross-motion. (ECF No. 79). As it stands, our reply would be due tomorrow, September 21, 2022. As the Court is aware, Petitioners filed a Notice of Motion on September 15, 2022, with answering papers due on September 29, 2022. So I sought consent from Petitioner Elena Sassower for respondents to submit both their Reply and their response to the Notice of Motion on September 29, 2022. Petitioner Sassower has consented to that request as long as both submissions are filed separately, which we agree to do.

Therefore, we respectfully request that respondents be permitted to file a reply relating to their cross-motion by September 29, 2022.

Thank you for your attention to this matter.

Respectfully,

By: /s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General  
(518) 776-2612  
Gregory.Rodriguez@ag.ny.gov

cc: Elana Ruth Sassower (via NYECF)

AG's Sept. 29, 2022 affirmation in opposition to petitioners' Sept. 15, 2022 motion [R.767-771]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

Petitioners,

**AFFIRMATION**

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

Index No. 904235-22

-against-

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, ET AL.,

Respondents.

---

Gregory J. Rodriguez, an attorney licensed to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to Respondents/Defendants the former New York State Joint Commission on Public Ethics; Legislative Ethics Commission; New York State Inspector General; Kathy Hochul, in her official capacity as Governor of the State of New York; Andrea Stewart-Cousins, in her official capacity as Temporary Senate President; the New York State Senate; Carl Heastie, in his official capacity as Assembly Speaker; the New York State Assembly; Letitia James, in her official capacity as Attorney General of the State of New York; and Thomas DiNapoli, in his official capacity as Comptroller of the State of New York (hereafter collectively "Respondents") in the above-captioned action.



2. I submit this Affirmation in opposition to Petitioners'/Plaintiffs' ("Petitioners") "Notice of Motion for Sanctions, Disqualification of AG , Summary Judgment, & Other Relief" dated September 16, 2022" (NYCEF No. 93).

3. For all of the reasons discussed in Respondents' accompanying Memorandum of Law, Petitioners' "Notice of Motion" should be denied. Also, Respondents have demonstrated an entitlement to an order dismissing the Petition/Complaint ("Petition") in their Cross-Motion to Dismiss pursuant to CPLR 3211 (NYCEF No. 79), and Petitioners failed to submit either facts or law to rebut this showing.

4. Petitioners argue that the Attorney General has a conflict of interest, and therefore cannot defend this action, because an appointment of an independent, outside counsel is necessary to determine "the interest of the state." NYCEF No. 94, pp. 7-10. Petitioners further cite to Executive Law § 63.1 and State Finance Law Article 7-A and claim that under those provisions the "Attorney General's obligation is not to defend, but to intervene and/or represent the plaintiff so as to uphold 'the interest of the state.'" NYCEF No. 94, p. 7-8.

5. There is no law to support Plaintiffs' claims that the Attorney General has a conflict of interest or has any duty to inform the plaintiff of the Attorney General's statutorilygranted decision making authority relating to how to carry out her duties under the Executive Law. Accordingly, Plaintiffs' motion for an order disqualifying the Attorney General and documenting how the Attorney General evaluates and represents the "interests of the state" must be denied. Further, as set forth in the accompanying Memorandum of Law, the Attorney General has a statutory duty to represent Respondents in this action, who are united in interest.



6. In their Memorandum of Law, Petitioners also seek sanctions against Respondents' counsel for alleged "fraud" and "frivolous" conduct. NYCEF No. 94, pp. 1, 3. In their Notice of Motion, it appears that Petitioners also assert that Respondents' counsel should be subject to disciplinary sanctions and that they have committed a "Judiciary Law 487 § 'misdemeanor'". NYCEF No. 93, p. 2.

7. Petitioners' application for sanctions is based on their apparent objection to defense counsel's pursuit of a dismissal motion, and a complete misunderstanding of the law, litigation and the power of the court. Petitioners' papers are replete with numerous personal attacks against Respondents' counsel, and the Office of the Attorney General, with the continual use of words such as "fraud", "frivolous", and "deceitful" in describing defense counsel's course of conduct during this litigation. Petitioners' unabashed and repeated attacks on counsel is abhorrent and should not be tolerated by the Court. If anything, Petitioners' conduct during this litigation is the type of behavior that is sanctionable.

8. The basis for Petitioners' allegations seeking criminal, monetary and professional sanctions against defense counsel is the fact that defense counsel filed a Cross-Motion to Dismiss the Petition. While Petitioners may not agree with Respondents' Cross-Motion to Dismiss, the motion is legally-sound and an appropriate response to the Petition filed by Petitioners.

9. Petitioners further move to compel Respondents to comply with a notice to "furnish papers to the Court" pursuant to CPLR 2214. NYCEF No. 94, p. 10. CPLR 2214 relates to the service and timing of motion papers; it is not a discovery tool. It appears that Petitioners misconstrue the purpose of CPLR 2214. CPLR 2214(c) requires the moving party to "furnish all other papers not already in the possession of the court necessary to the consideration of the

AG's Sept. 29, 2022 affirmation in opposition to petitioners' Sept. 15, 2022 motion [R.767-771]

questions involved.” Here, Respondents filed a pre-discovery Cross-Motion to Dismiss, along with opposition papers to Petitioners’ Motion for a Preliminary Injunction. The Petition, which Respondents moved against, is contained on the Court’s electronic docket. NYCEF No. 1. Respondents’ pre-discovery Cross-Motion to Dismiss was based on legal deficiencies contained in the Petition; namely, failure to state a claim for which relief can be granted, lack of standing, non-justiciability, immunity and improper parties. NYCEF Nos. 79, 80. Thus, Petitioners’ second “CPLR 2214 Notice of Papers to be Furnished to the Court” should be denied.

10. Further, Petitioners’ “CPLR 3120 Notice for Discovery and Inspection” dated September 15, 2022 should also be denied as a nullity, as disclosure is stayed pursuant to CPLR 3214(b) in light of Respondents’ pending motion to dismiss under CPLR 3211. For this same reason, and insofar as Petitioners seek to use their “CPLR 2214 Notices of Papers to be Furnished to the Court” as a discovery tool, that request should also be denied pursuant to CPLR 3214(b).

11. Moreover, in response to Petitioners’ assertion that Respondents have a duty to provide documents listed in Petitioners’ “CPLR 2214(c) Notices of Papers to be Furnished to the Court,” to the extent that such documents exist, they are publicly available either online or through the relevant public relations offices of the Assembly or Senate. In fact, upon information and belief, Petitioners have received some of these documents in response to FOIL requests. Since the Petitioners have failed to identify any documents exclusively in the possession of Respondents, or that are at all relevant to the Petition, any relief sought by Petitioners in connection with their “Notice of Papers to be Furnished to the Court” should be denied.

AG's Sept. 29, 2022 affirmation in opposition to petitioners' Sept. 15, 2022 motion [R.767-771]

12. Lastly, Petitioners have not shown any valid ground to disqualify Judge Gandin from adjudicating this litigation and their general allegations of bias are not grounds for disqualification under Judiciary Law § 14.

WHEREFORE, Respondents respectfully request that the court issue an order (1) denying the relief requested in Petitioners' September 15, 2022 Notice of Motion" (NYCEF No. 93) and (2) granting Respondents any further relief that the court deems just, proper and equitable.

Dated: Albany, New York  
September 29, 2022

/s/ *Gregory J. Rodriguez*  
Gregory J. Rodriguez

**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Gregory Rodriguez, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing affirmation of law, exclusive signature block, is 1,073. The foregoing affirmation complies with the word count limit pursuant to Rule 202.8-b. In determining the number of words in the foregoing affirmation, I relied upon the word count of the word-processing system used to prepare the document.

s/ *Gregory Rodriguez*  
Gregory Rodriguez

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

Petitioners,

Index No. 904235-22

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

Gandin, J.

-against-

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, ET AL.,

Respondents.

---

**MEMORANDUM OF LAW IN OPPOSITOIN  
TO PETITIONERS' NOTICE OF MOTION  
DATED SEPTEMBER 15, 2022**

LETITIA JAMES  
Attorney General  
State of New York  
Attorney for Respondents  
The Capitol  
Albany, New York 12224

Gregory J. Rodriguez  
Assistant Attorney General,  
of Counsel  
Telephone: (518) 776-2612  
Fax: (518) 915-7738 (Not for service of papers)

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

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AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

**PRELIMINARY STATEMENT**

Respondents submit this Memorandum of Law in opposition to the relief requested in Petitioners' "September 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment, & Other Relief" (NYCEF No. 93). In their moving papers, Petitioners continuously make allegations of attorney fraud, deceit, perjury, and misconduct and other outlandish and unsupported accusations. NYCEF No. 94. For the reasons set forth below, the relief requested by Petitioners should be denied.

**ARGUMENT****POINTS I****PLAINTIFFS' REQUEST THAT RESPONDENTS' MOTION TO DISMISS BE CONVERTED TO A MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED**

Petitioners seek an order from the court converting Respondents' Motion to Dismiss to a Motion for Summary Judgment pursuant to CPLR 3211(c), *see* Petitioners' Memorandum of Law, NYCEF No. 94 ("Pl. Mem. of Law") at pp. 12-13<sup>1</sup>, while simultaneously seeking pre-answer discovery and the production of documents. *See id.* at pp. 10-12. CPLR 3211 (c) permits a court, in its discretion, to treat a CPLR 3211 (a) motion to dismiss as a motion for summary judgment "after adequate notice to the parties." The notice requirement may be dispensed with where the parties have made it "unequivocally clear that they are laying bare their proof and deliberately charting a summary judgment course" *Four Seasons Hotels v Vinnik*, 127 A.D.2d 310, 320 (1<sup>st</sup> Dept. 1987). However, here, as argued in Respondents' moving papers, the

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<sup>1</sup> In Petitioners' "September 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment, & Other relief," Petitioners state that they are moving "pursuant to CPLR 3211 (c), granting summary judgment to petitioners on ten causes of action of their June 6, 2022 verified petition/complaint..." NYCEF No. 93, p. 3. Thus, under CPLR 3211(c), Petitioners seek to convert Respondents' Cross-Motion to Dismiss to a summary judgment motion. *See also* Petitioners' Affidavit dated September 15, 2022. NYCEF No. 87, ¶ 5.



AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

Petition/Complaint (“Petition”) fails to state a cause of action as a matter of law, and no extrinsic evidence is necessary to dispose of this case. Accordingly, petitioners’ request should be denied.

In the event that, *arguendo*, the Court finds that the Petition states a claim on its face, Respondents have no objection to proceeding directly to summary judgment without discovery if Petitioner is so inclined. However, to the extent that the Court grants Petitioners’ request to convert Respondents’ motion to one for summary judgment, Respondents respectfully request that they be provided the opportunity to offer extrinsic evidence in support of such a motion, if they deem such to be necessary or helpful to the Court in deciding the motion.

## **POINTS II**

### **PETITIONERS’ REQUEST FOR SANCTIONS SHOULD BE DENIED**

In their Memorandum of Law, Petitioners seek costs and sanctions against Respondents’ counsel based entirely on unsubstantiated accusations sounding of alleged fraud upon the Court, deceit and making frivolous submissions. Pl. Mem. of Law, pp. 1-3. In relation to these baseless accusations, Petitioners not only seek costs and sanctions against Respondents’ counsel, they also seek penal law punishment, treble damages and a referral to disciplinary authorities. *Id.*, pp. 1, 3; *see also* Petitioners’ Notice of Motion, NYCEF No. 93 (“Pet. Not. of Mot.”), p. 2.

Petitioners’ application for sanctions is based on their apparent objection to defense counsel’s pursuit of a dismissal motion, and a complete misunderstanding of the law, litigation and the power of the Court. Petitioners’ papers are replete with numerous personal attacks against Respondents’ counsel, and the Office of the Attorney General, with the continual use of words such as “fraud”, “frivolous”, and “deceitful” in describing their course of conduct during litigation. Petitioners’ unabashed and repeated attacks on counsel is abhorrent and should not be tolerated by the Court. If anything, Petitioners’ conduct during this litigation is the type of behavior that is sanctionable.

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

Further, while Petitioners restate the language contained in various regulations and statutes in purported support of their request for sanctions and criminal charges, i.e., 22 NYCRR § 130-1.1, Judiciary Law § 487, Pl. Mem. of Law, pp. 1-3, along with rules of judicial and professional conduct, their papers are completely devoid of any allegations whatsoever to even suggest sanctionable conduct. In the first, second and third “branch of relief” in Petitioners’ Memorandum of Law, Petitioners argue, in wholly conclusory fashion, that Respondents’ Cross-Motion to Dismiss is frivolous, “fashioned in fraud”, and completely without merit. *Id.*, pp. 1-7

For the above reasons, Petitioners’ motion for sanctions, costs, criminal charges and disciplinary against Respondents’ counsel should be flatly denied.

### POINTS III

#### PETITIONERS’ REQUEST THAT THE ATTORNEY GENERAL BE DISQUALIFIED SHOULD BE DENIED

To the extent that Petitioners assert that Attorney General James should be disqualified, any such assertion is wholly without merit. Petitioners seem to suggest that Attorney General James should be precluded from representing the Attorney General’s Co-Respondents based on a claimed conflict of interest.<sup>2</sup> This same argument was brought by Petitioners in the past and was rejected. *See Ctr. For Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1408-09 (3<sup>rd</sup> Dept. 2018). In that case, the Court held that “the Attorney General has a statutory duty to represent Respondents in this action, who are united in interest.” *Id.*, citing Executive Law § 63 [1]; *Matter of Grzyb v Constantine*, 182 A.D.2d 942, 943 (1992), *lv denied* 80 N.Y.2d 755 (1992). For the same reasons stated by the Third Department, as well as the reasons articulated

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<sup>2</sup> In their Memorandum of Law, Petitioners point to their past complaints to JCOPE concerning alleged violations of Public Officers Law § 74 against a number of state officials, including the Attorney General. Pl. Mem. of Law, pp. XX.

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

by this Court during oral argument on July 7, 2022<sup>3</sup>, Petitioners' request that Attorney General James should be disqualified should be denied.

#### POINTS IV

#### **PETITIONERS DO NOT IDENTIFY ANY VALID GROUND TO DISQUALIFY JUDGE GANDIN FROM ADJUDICATING THIS LITIGATION**

Petitioners argue that disqualification of Justice Gandin is required by Judiciary Law § 14. Pl. Mem. of Law, pp. 14-17. Specifically, Petitioners argue that every sitting Supreme Court Justice in New York State, including Justice Gandin, is “divested of jurisdiction to hear this case pursuant to Judicial Law § 14 because of their direct financial and other interests and ‘rule of necessity’ cannot be invoked”, and, therefore, the Court’s only option is to remove this case to the federal courts. *Id.*, pp. 14-17; Pet. Not. of Mot., p. 3.

Judiciary Law § 14 provides, in pertinent part:

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

Judiciary Law ¶ 14.

It appears that Petitioners seek Justice Gandin’s recusal in this matter solely because of his role as a Supreme Court Justice. To the extent Petitioners argue that Justice Gandin has an interest in the litigation because Petitioners’ “complaints involve the commission-based ‘force of law’, judicial pay raises . . .”, their argument is baseless. Petitioners’ general allegations of bias are not grounds for disqualification under Judiciary Law § 14. Petitioners are required to show proof that demonstrates bias or prejudice. *See Modica v. Modica*, 15 A.D.3d 635, 636 (2d Dep’t 2005).

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<sup>3</sup> A copy of the transcript of those proceedings is attached to Petitioners’ opposition papers at NYCEF No. 91.

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

Petitioners offer nothing but conclusory allegations. It is settled law that, “[a]bsent a legal disqualification under Judiciary Law § 14, a court is the sole arbiter of the need for recusal, and its decision is a matter of discretion and personal conscience.” *Galanti v Kraus*, 98 A.D.3d 559, 559 (2d Dep’t 2012); *see also Spremo v. Babchik*, 155 Misc. 2d 796, 800 (“A motion for recusal is addressed to the conscience of the court and in the absence of ill will to a litigant, a Judge has an affirmative duty not to recuse himself, but to preside over the case.”).

In *Ctr. For Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406 (3<sup>rd</sup> Dept. 2018), Petitioners herein argued that Judge Hartman, Acting Supreme Court Justice, Albany County, should be disqualified from deciding a case involving a challenge to judicial compensation. In upholding the Court’s decision denying Petitioners’ recusal motion, the Appellate Division held:

“The self-interest inherent in adjudicating a dispute involving judicial compensation would provide grounds for disqualifying not only Justice Hartman, but every judge who might replace her. Accordingly, the Rule of Necessity permitted Justice Hartman to decide this action on the merits (citation omitted). Nor was Justice Hartman required to recuse herself for any other reason. Absent a legal disqualification under Judiciary Law § 14, which is not at issue here, a trial judge is the sole arbiter of recusal[,] and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion”

*Id.*, at 1408.

For those same reasons, Petitioners have demonstrated no basis for disqualifying Justice Gandin from adjudicating this litigation, and any request by them that Justice Gandin recuse himself from this proceeding should be denied.<sup>4</sup>

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<sup>4</sup> Petitioners sole reason for their request to have this case removed to federal court is their contention that every NYS Supreme Court Justice must recuse themselves. As stated above, Petitioners have demonstrated no basis for disqualifying Justice Gandin.

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

**POINT V****PETITIONERS' REQUEST TO COMPEL RESPONDENTS TO FURNISH THE COURT WITH RESPONSES TO PETITIONERS' JUNE 28, 2022 AND SEPTEMBER 3, 2022 CPLR 2214 (c) "NOTICE OF PAPERS TO BE FURNISHED TO THE COURT" AND SEPTEMBER 15, 2022 CPLR 3120 NOTICE OF DISCOVERY AND INSPECTION SHOULD BE DENIED**

Petitioner further moves to compel Respondents to "furnish papers to the Court" pursuant to CPLR 2214. Pl. Mem. of Law, pp. 10-12. CPLR 2214, entitled "Motion papers; service; time," relates to the service and timing of motion papers, and is not a discovery tool. Rather, Article 31 of the CPLR contains the provisions relating to the scope of disclosure, including CPLR 3120 - "Discovery and production of documents and things for inspection, testing, copying or photographing." CPLR 2214(c) requires the moving party to "furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved." Here, Respondents filed a pre-discovery Cross-Motion to Dismiss, along with opposition papers to Petitioners' Motion for a Preliminary Injunction. The Petition, which Respondents moved against, is contained on the Court's electronic docket. NYCEF No. 1. "Except when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system." CPLR 2214 (c). Respondents' pre-discovery Cross-Motion to Dismiss was based on legal deficiencies contained in the Petition (NYCEF No. 1). Namely, a failure to state a claim for which relief can be granted, lack of standing, non-justiciability, immunity and improper parties. NYCEF No. 79. Thus, Petitioners' "CPLR 2214 Notice[s] of Papers to be Furnished to the Court" should be denied.

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

Petitioners also filed a “CPLR 3120 Notice for Discovery and Inspection” on September 15, 2022 and seek an order directing Respondents to respond to said notice. This request should also be denied as discovery was stayed once Respondents filed their Cross-Motion to Dismiss under CPLR 3211. Pursuant to CPLR 3214 (b) “[s]ervice of a notice of motion under 3211 ...stays disclosure until determination of the motion, unless the court orders otherwise.” Therefore, to the extent that Petitioners inappropriately attempt to obtain discovery through their CPLR 2214 notices, those should also be foreclosed under CPLR 3214(b).

### **POINTS VI**

#### **PETITIONERS’ SUBMISSION ENTITLED “ANALYSIS OF THE AUGUST 18, 2022 CROSS-MOTION OF RESPONDENT ATTORNEY GENERAL LETITIA JAMES” SHOULD BE STRICKEN**

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

AG's Sept. 29, 2022 memorandum of law in opposition to petitioners' Sept. 15, 2022 motion [R.772-783]

**CONCLUSION**

For the reasons set forth above, the relief requested in Petitioners' "September 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment, & Other Relief" should be denied, and Respondents should be granted such other relief as the Court deems just and proper.

Dated: Albany, New York  
September 29, 2022

LETITIA JAMES  
Attorney General  
State of New York  
Attorney for Respondents  
The Capitol  
Albany, New York 12224

By: /s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General, of Counsel  
Telephone: (518) 776-2612  
Fax: (518) 915-7738 (Not for service of papers)

TO: Petitioners (via NYSCEF)

**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Gregory Rodriguez, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 2,019 . The foregoing memorandum of law complies with the word count limit pursuant to Rule 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

s/ Gregory Rodriguez  
Gregory Rodriguez



**STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES  
Attorney General

STATE COUNSEL DIVISION  
Litigation Bureau

Writer Direct: (518) 776-2612

September 28, 2022

Office of the Clerk of the New York State Supreme Court  
Supreme and County Courts  
Albany County Courthouse  
Albany, NY

Re: ***No Fee Authorization Letter in ...***

*Elena Ruth Sassower, Center for Judicial Accountability, Inc. v. New York State Joint  
Commission on Public Ethics, et al.*  
Index No. 904235-22

Dear Clerk:

Submitted herewith for electronic filing please find Respondents' opposition to Petitioners' September 16, 2022 Notice of Motion consisting of a memorandum of law and attorney affirmation. As the Respondents are agencies of the State of New York or individuals sued in their capacity as agents of the State of New York, no fee is required to be paid for the filing of this motion.

Thank you kindly for your consideration of this matter.

Respectfully yours,  
/s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General

cc: Petitioners (via NYSCEF)



AG's Sept. 29, 2022 Affirmation in Further Support of Opposition to Preliminary Injunction [R.785-789]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

---

In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

Petitioners,

**REPLY AFFIRMATION**

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

Index No. 904235-22

-against-

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, ET AL.,

Respondents.

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Gregory J. Rodriguez, an attorney licensed to practice in the State of New York, affirms  
the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to  
Respondents/Defendants former New York State Joint Commission on Public Ethics, Legislative  
Ethics Commission, New York State Inspector General, Kathy Hochul, in her official capacity as  
Governor of the State of New York; Andrea Stewart-Cousins, in her official capacity as Temporary  
Senate President, and the New York State Senate, Carl Heastie, in his official capacity as Assembly  
Speaker, and the New York State Assembly, Letitia James, in her official capacity as Attorney  
General of the State of New York, Thomas DiNapoli, in his official capacity as Comptroller of the  
State of New York (hereafter collectively "Respondents") in the above-captioned action.

AG's Sept. 29, 2022 Affirmation in Further Support of Opposition to Preliminary Injunction [R.785-789]

2. I submit this affirmation in further support of Respondents' Cross-Motion to Dismiss the petition/complaint pursuant to CPLR 3211(a)(1), 3211(a)(3) and 3211(a)(7) and in further support of their opposition to Petitioners' request for preliminary injunctive relief.

3. For all of the reasons discussed in Respondents' initial memorandum of law in support of cross-motion to dismiss (ECF No. 80), and the memorandum of law submitted herewith, the Petition/Complaint (hereinafter "Petition") should be dismissed, and Petitioners' motion for preliminary injunctive relief should be denied.

4. The Respondents have demonstrated an entitlement to an order dismissing the Petition, and the Petitioners have failed to submit either facts or law to rebut this showing.

5. On September 15, 2022, Petitioners/Plaintiffs (hereinafter "Petitioners") filed several documents in opposition to Respondents' Cross-Motion to Dismiss and purportedly in support of a "Notice of Motion". Petitioners submitted a Memorandum of Law (ECF No. 94) and an affidavit of Petitioner Elena Sassower (ECF No. 87). In addition, Petitioners filed a 29-page single-spaced document entitled "Analysis of the August 18, 2022 Cross-Motion of Respondent Attorney General James." (ECF No.88). The document entitled "Analysis of the August 18, 2022 Cross-Motion of Respondent Attorney General James" was not brought pursuant to any rule of the New York State Civil Practice Law and Rules and, therefore, should be stricken by the Court. Second, this document should also be stricken as it contains approximately 12,600 words, almost double the number of words permitted for "affidavits, affirmations, briefs and memoranda of law" under Rule 202.8-b of the Uniform Rules for Trial Courts.

6. Respondents fully stand by their submission in support of their cross-motion to dismiss and the showing contained therein, and, notwithstanding Petitioners' continued insults

and offensive claims made against defense counsel, Petitioners have failed to rebut this showing.

Therefore, Respondents' cross-motion to dismiss should be granted.

7. Petitioners also seek an order from the court pursuant to CPLR 3211(c) converting Respondents' motion to dismiss to a motion for summary judgment pursuant to CPLR 3211(c). ECF No. 87. However, as set forth in Respondents' moving papers, the petition fails to state a cause of action as a matter of law, and therefore, no extrinsic evidence is necessary to dispose of this case. Accordingly, Petitioners' request should be denied. However, to the extent that the court grants plaintiffs' request to convert defendants' motion to one for summary judgment, Respondents respectfully request that they be provided the opportunity to offer extrinsic evidence in support of such a motion.

8. Petitioners argue that the Attorney General has a conflict of interest, and therefore cannot defend this action, and that the appointment of an independent, outside counsel is necessary to determine "the interest of the state." ECF No. 94, pp. 7-10. Petitioners further cite to Executive Law 63.1 and State Finance Law 7-A and claim that under those provisions, the "Attorney General's obligation is not to defend, but to intervene and/or represent the plaintiff so as to uphold 'the interest of the state.'" ECF No. 94, p. 7-8.

9. There is no law to support plaintiffs' claims that the Attorney General has a conflict of interest or has any duty to inform the plaintiff of the Attorney General's statutorily-granted decision making authority relating to how to carry out her duties under the Executive Law. Accordingly, plaintiffs' motion for an order disqualifying the Attorney General and documenting how the Attorney General evaluates and represents the "interests of the state" must be denied.

10. Petitioners further seek to compel Respondents to comply with a notice to “furnish papers to the Court” pursuant to CPLR 2214. ECF No. 94, p. 10. First, CPLR 2214 relates to the service and timing of motion papers, it is not a discovery tool. It appears that Petitioners misconstrue the purpose of CPLR 2214. CPLR 2214(c) requires the moving party to “furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved.” Here, Respondents filed a pre-discovery cross-motion to dismiss, along with opposition papers to Petitioners’ motion for a preliminary injunction. The Petition, against which the Respondents moved, is contained on the Court’s electronic docket. ECF No. 1. The Respondents’ pre-discovery cross-motion to dismiss was based on deficiencies contained in the Petition, specifically, a failure to state a claim upon which relief can be granted, lack of standing, the assertion of claims that are not justiciable, the immunity of Respondents, and that respondents James and DiNapoli are not proper respondents. ECF No. 79. Thus, Petitioners’ “CPLR 2214(c) Notices of Papers to be Furnished to the Court” should be denied<sup>1</sup>. Second, as petitioners’ “CPLR 2214 Notices of Papers to be Furnished to the Court” are essentially requests for disclosure, they should also be denied under CPLR 3214(b), pursuant to which any disclosure in this matter is stayed while Respondents’ CPLR 3211 cross-motion to dismiss is pending. For that same reason, Petitioners’ “CPLR 3214 Notice for Discovery and Inspection” (ECF No. 92) should also be deemed stayed pursuant to CPLR 3214(b) as Respondents’ motion to dismiss is pending.

WHEREFORE, the Respondents respectfully request that the court issue an order (1) granting Respondents’ cross-motion to dismiss in its entirety, with prejudice, (2) denying

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<sup>1</sup> Petitioners filed two notices entitled “CPLR 2214(c) Notice of Papers to be Furnished to the Court”. See Dkt. Nos. 60 and 85.

AG's Sept. 29, 2022 Affirmation in Further Support of Opposition to Preliminary Injunction [R.785-789]

Petitioners' request for preliminary injunctive relief, and (2) granting Respondents such further relief the court deems just, proper and equitable.

Dated: Albany, New York  
September 29, 2022

/s/ *Gregory J. Rodriguez*

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Gregory J. Rodriguez

**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Gregory Rodriguez, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing affirmation, exclusive signature block, is 1,021. The foregoing affirmation complies with the word count limit pursuant to Rule 202.8-b. In determining the number of words in the foregoing affirmation, I relied upon the word count of the word-processing system used to prepare the document.

s/ *Gregory Rodriguez*  
Gregory Rodriguez

AG's Sept. 29, 2022 Memorandum of Law in Further Support of Aug. 18, 2022 Dismissal Cross-Motion [R.790-801]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

*Petitioners/Plaintiffs,*

Index No. 904235-22

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

Gandin, J.

-against-

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, ET AL.,

*Respondents/Defendants.*

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**MEMORANDUM OF LAW IN FURTHER  
SUPPORT OF RESPONDENTS' CROSS-  
MOTION TO DISMISS**

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**PRELIMINARY STATEMENT**

Respondents submit this memorandum of law in further support of their cross-motion to dismiss the Verified Petition/Compliant (“Petition”) and in reply to Petitioners’ opposition papers. As set forth in Respondents’ opening memorandum of law, this Court should dismiss the Petition on the grounds that: (1) Petitioners lack standing to assert the causes of action raised in the Petition and their claims are not justiciable, (2) the Petition fails to state a claim under Article 78 for mandamus relief, (3) Respondents Hochul, Stewart-Cousins and Heastie are entitled to immunity from Petitioners’ claims, (4) Petitioners fail to state a claim that the state budget is unconstitutional, and (5) Respondents James and DiNapoli are not proper respondents. Respondents fully stand by their submission in support of their cross-motion to dismiss and the arguments contained therein, and Petitioners have failed to rebut Respondents’ showing of their entitlement to such relief. Therefore, and for all the reasons set forth in Respondents’ moving papers, the Court should dismiss the Petition.

**ARGUMENT****POINTS I****PLAINTIFFS’ REQUEST THAT RESPONDENTS’ MOTION TO DISMISS BE  
CONVERTED TO A MOTION FOR SUMMARY JUDGMENT SHOULD  
BE DENIED**

Petitioners seek an order from the court converting Respondents’ motion to dismiss to a motion for summary judgment pursuant to CPLR 3211(c), see Petitioners’ Memorandum of Law at pp. 12-13<sup>1</sup>, while simultaneously seeking pre-answer discovery and the production of documents. See *id.* at pp. 10-12. CPLR 3211 (c) permits a court, in its discretion, to treat a CPLR

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<sup>1</sup> In Petitioners’ “September 15, 2022 Notice of Motion for Sanctions, Disqualification of AG, Summary Judgment, & Other relief,” petitioners state that they are moving “pursuant to CPLR 3211 (c), granting summary judgment to petitioners on ten causes of action of their June 6, 2022 verified petition/complaint...” ECF No. 93, p. 3. Thus, under CPLR 3211(c), petitioners seek to convert respondents’ cross-motion to dismiss to a summary judgment motion. See also Petitioners’ affidavit dated September 15, 2022. ECF No. 87, ¶ 5.

AG's Sept. 29, 2022 Memorandum of Law in Further Support of Aug. 18, 2022 Dismissal Cross-Motion [R.790-801]

3211 (a) motion to dismiss as a motion for summary judgment "after adequate notice to the parties." The notice requirement may be dispensed with where the parties have made it "unequivocally clear that they are laying bare their proof and deliberately charting a summary judgment course" *Four Seasons Hotels v Vinnik*, 127 AD2d at 320 (1<sup>st</sup> Dept. 1987). However, here, as argued in respondents' moving papers, the petition/complaint fails to state a cause of action as a matter of law, and no extrinsic evidence is necessary to dispose of this case. Accordingly, petitioners' request should be denied.

In the event that, *arguendo*, the courts finds that the complaint states a claim on its face, the respondents have no objection to proceeding directly to summary judgment without discovery if the plaintiff is so inclined. However, to the extent that the court grants Petitioners' request to convert Respondents' motion to one for summary judgment, Respondents respectfully request that they be provided the opportunity to offer extrinsic evidence in support of such a motion.

## **POINTS II**

### **PETITIONERS' SUBMISSION ENTITLED "ANALYSIS OF THE AUGUST 18, 2022 CROSS-MOTION OF RESPONDENT ATTORNEY GENERAL LETITIA JAMES" (DKT. NO. 88) SHOULD BE STRICKEN**

On September 15, 2022, Petitioners filed several documents purportedly in opposition to Respondents' cross-motion to dismiss and in support of Petitioners' Notice of Motion for Sanctions and other relief. ECF Nos. 87, 88, 93, 94. Included in Petitioners' submission is a document entitled "Analysis of the August 18, 2022 Cross-Motion of Respondent Attorney General Letitia James." ECF No. 88. This document is single-spaced and consists of 29 pages and contains approximately 12,600 words. First, this document was not brought pursuant to any rule of the New York State Civil Practice Law and Rules and, therefore,

AG's Sept. 29, 2022 Memorandum of Law in Further Support of Aug. 18, 2022 Dismissal Cross-Motion [R.790-801]

should be stricken by the Court. Second, 22 NYCRR § 202.8-b of the Uniform Civil Rules for the Supreme Court & County Court, entitled “Length of Papers” states: “(a) Where prepared by use of a computer, unless permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each”. Therefore, since petitioners’ submission is almost double that allowed under the uniform rules, it should be stricken. In any event, Respondents fully stand by their submission in support of their cross-motion to dismiss and the arguments contained therein. Therefore, Respondents’ cross-motion to dismiss should be granted.

### **POINTS III**

#### **RESPONDENTS’ CROSS-MOTION TO DISMISS SHOULD BE GRANTED**

Respondents fully stand by their submission in support of their cross-motion to dismiss and the arguments contained therein, Petitioners, despite their continued insults and offensive claims made against defense counsel, have failed to rebut this showing. Therefore, Respondents’ cross-motion to dismiss should be granted. Further, as discussed in respondents’ moving papers, the corporate plaintiff cannot proceed pro se, as a matter of law. *Center for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1409 (3d Dept. 2018), *Naroor v. Gondal*, 5 N.Y.3d 757, 757 (2005); *Barretta Realty Skyline v. Principal Land Abstract, LLC*, 38 Misc. 3d 146(A) (2d Dept. 2013). Additionally, as fully set forth in Petitioners’ moving papers the Petitioners lack standing and the Petition fails to allege a justiciable controversy. NYCEF No. 80, pp. 4-8, See also *Sassower v. Comm’n on Judicial Conduct of N.Y.*, 289 A.D.2d 119 (1st Dept. 2001); *Urban Justice Ctr. v. Pataki*, 38 A.D.3d 20, 27, 30 (1<sup>st</sup> Dept 2006). Further, as demonstrated in respondents’ moving papers, the causes of action raised in the Petition should be dismissed because the Petition fails to state a claim under Article 78 for mandamus relief, Respondents Hochul, Stewart-Cousins and Heastie are entitled to immunity from Petitioners’

AG's Sept. 29, 2022 Memorandum of Law in Further Support of Aug. 18, 2022 Dismissal Cross-Motion [R.790-801]

claims, Petitioners fail to state a claim that the state budget is unconstitutional, and Respondents James and DiNapoli are not proper parties. For these reasons, Respondents' motion to dismiss should be granted.<sup>2</sup>

#### POINTS IV

#### PETITIONERS' REQUEST THAT THE ATTORNEY GENERAL BE DISQUALIFIED SHOULD BE DENIED

Petitioners' assertion that Attorney General James should be disqualified, that argument is wholly without merit. Petitioners seem to suggest that Attorney General James should be disqualified from representing the co-respondents/defendants based on a claimed conflict of interest.<sup>3</sup> This same argument was brought by Petitioners in the past and was rejected. *See Ctr. For Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406, 1408-09 (3<sup>rd</sup> Dept. 2018). In that case, the Court held that "the Attorney General has a statutory duty to represent defendants in this action, who are united in interest," and Petitioners cannot manufacture a conflict of interest by baselessly naming her a party to the proceeding. *Id.*, citing Executive Law § 63 [1]; *Matter of Grzyb v Constantine*, 182 AD2d 942, 943, 582 NYS2d 298 [1992], *lv denied* 80 NY2d 755, 602 NE2d 231, 588 NYS2d 823 [1992]]. *Id.* For the same reasons stated by the Third Department, as well as for the reasons articulated by this Court during oral argument on July 7, 2022 (ECF No. 91, p.32), plaintiffs' request that Attorney General James should be disqualified should be denied.

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<sup>2</sup> Petitioners filed a document entitled "Verified Amendment to June 6, 2022 Verified Petition/Complaint" which purportedly attempts to add additional language to certain paragraphs in the initial Verified Petition/Complaint and alleges further outlandish and unsupported claims of "corruption and larceny" against various Respondents. While this was not brought pursuant to any provision of the CPLR, there is nothing contained in the new allegations that rebut Respondents' showing in their original moving papers.

<sup>3</sup> In their Memorandum of Law (ECF No. 94), Petitioners point to their past complaints to JCOPE concerning alleged violations of Public Officers Law 74 against a number of state officials, including the Attorney General.

## POINTS V

**PETITIONERS DO NOT IDENTIFY ANY VALID GROUND TO DISQUALIFY JUDGE GANDIN FROM ADJUDICATING THIS LITIGATION**

Petitioners argue that disqualification of Justice Gandin is required by Judiciary Law § 14. Pl. Mem. Of Law, pp. 14-17. Specifically, Petitioners argue that every sitting Supreme Court Justice in New York State, including Justice Gandin, is “divested of jurisdiction to hear this case pursuant to Judicial Law § 14 because of their direct financial and other interests, that the ‘rule of necessity’ cannot be invoked”, and that, therefore, the Court’s only option is to remove this case to the federal courts. *Id.* pp. 14-17, Pet. Not. Of Mot., p. 3.

Judiciary Law § 14 provides, in pertinent part:

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

Judiciary Law ¶ 14.

It appears that Petitioners seek Justice Gandin’s recusal in this matter solely because of his status as a Supreme Court Justice. To the extent Petitioners argue that Justice Gandin has an interest in the litigation because Petitioners’ “complaints involve the commission-based ‘force of law’, judicial pay raises . . .”, their argument is baseless. Petitioners’ general allegations of bias are not grounds for disqualification under Judiciary Law § 14. Petitioners are required to show proof that demonstrates bias or prejudice. See *Modica v. Modica*, 15 A.D.3d 635, 636 (2d Dep’t 2005).

Petitioners offer nothing but their own circular reasoning and conclusory accusations. It is settled law that, “[a]bsent a legal disqualification under Judiciary Law § 14, a court is the sole arbiter of the need for recusal, and its decision is a matter of discretion and personal conscience.” *Galanti v Kraus*, 98 A.D.3d 559, 559 (2d Dep’t 2012); *see also Spremo v. Babchik*, 155 Misc. 2d

AG's Sept. 29, 2022 Memorandum of Law in Further Support of Aug. 18, 2022 Dismissal Cross-Motion [R.790-801]

796, 800 (“A motion for recusal is addressed to the conscience of the court and in the absence of ill will to a litigant, a Judge has an affirmative duty not to recuse himself, but to preside over the case.”).

In *Ctr. For Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406 (3<sup>rd</sup> Dept. 2018), the Petitioners therein argued that Judge Hartman, Acting Supreme Court Justice, Albany County, should be disqualified from deciding a case involving a challenge to judicial compensation. In upholding the Court’s decision denying Petitioners’ recusal motion, the Appellate Division held:

“The self-interest inherent in adjudicating a dispute involving judicial compensation would provide grounds for disqualifying not only Justice Hartman, but every judge who might replace her. Accordingly, the Rule of Necessity permitted Justice Hartman to decide this action on the merits (citation omitted) Nor was Justice Hartman required to recuse herself for any other reason. Absent a legal disqualification under Judiciary Law § 14, which is not at issue here, a trial judge is the sole arbiter of recusal[,] and his or her decision, which lies within the personal conscience of the court, will not be disturbed absent an abuse of discretion”

*Id.*, at 1408.

For those same reasons, Petitioners have failed to demonstrate any basis for disqualifying Justice Gandin from adjudicating this litigation.<sup>4</sup>

## POINT VI

### **PETITIONERS’ REQUEST TO COMPEL RESPONDENTS TO FURNISH THE COURT WITH RESPONSES TO PETITIONERS’ JUNE 28, 2022 AND SEPTEMBER 3, 2022 CPLR 2214 (c) “NOTICE OF PAPERS TO BE FURNISHED TO THE COURT” AND SEPTEMBER 15, 2022 CPLR 3120 NOTICE OF DISCOVERY AND INSPECTION SHOULD BE DENIED**

Petitioners further moves to compel Respondents to “furnish papers to the Court” pursuant to CPLR 2214. Pl. Memo. Of Law, pp. 10-12. CPLR 2214, entitled “Motion papers; service; time”, relates to the service and timing of motion papers, and is not a discovery tool. Rather, Article 31

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<sup>4</sup> Petitioners sole reason for their request to have this case removed to federal court is their contention that all NYS Supreme Court Justices must recuse themselves. As shown above, Petitioners have demonstrated no basis for disqualifying Justice Gandin.

of the CPLR contains the provisions relating to the scope of disclosure, including CPLR 3120 - “Discovery and production of documents and things for inspection, testing, copying or photographing.” CPLR 2214(c) requires the moving party to “furnish all other papers not already in the possession of the court necessary to the consideration of the questions involved.” Here, Respondents filed a pre-discovery Cross-Motion to Dismiss, along with papers opposing Petitioners’ Motion for a Preliminary Injunction. The Petition, against which Respondents moved, is contained on the Court’s electronic docket. NYSCEF No. 1. “Except when the rules of the court provide otherwise, in an e-filed action, a party that files papers in connection with a motion need not include copies of papers that were filed previously electronically with the court, but may make reference to them, giving the docket numbers on the e-filing system.” CPLR 2214 (c). Respondents’ pre-discovery Cross-Motion to Dismiss was based on legal deficiencies contained in the Petition (NYSCEF No. 1). Namely, a failure to state a claim for which relief can be granted, lack of standing, non-justiciability, immunity and improper parties. NYSCEF No. 79. Thus, Petitioners’ “CPLR 2214 Notice[s] of Papers to be Furnished to the Court” should be denied.

Petitioners also filed a “CPLR 3120 Notice for Discovery and Inspection” on September 15, 2022 and seek an order directing Respondents to respond to said notice. This request should also be denied as discovery was stayed once Respondents filed their Cross-Motion to Dismiss under CPLR 3211. Pursuant to CPLR 3214 (b) “[s]ervice of a notice of motion under 3211 ...stays disclosure until determination of the motion, unless the court orders otherwise.” Therefore, to the extent that Petitioners’ inappropriately attempt to obtain discovery through their CPLR 2214 notices, those attempts are also be foreclosed under CPLR 3214(b).



AG's Sept. 29, 2022 Memorandum of Law in Further Support of Aug. 18, 2022 Dismissal Cross-Motion [R.790-801]

**CONCLUSION**

For the above reasons, and the reasons set forth in Respondents' original moving papers, Petitioners' motion for a preliminary injunction should be denied, and Respondents' cross-motion to dismiss should be granted in its entirety with prejudice.

Dated: Albany, New York  
September 29, 2022

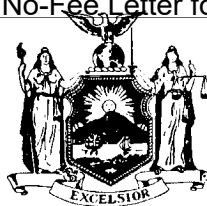
LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Respondents  
The Capitol  
Albany, New York 12224

By: /s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General, of Counsel  
Telephone: (518) 776-2612  
Fax: (518) 915-7738 (Not for service of papers)

TO: Petitioners (via NYSCEF)

**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Gregory Rodriguez, affirm under penalty of perjury pursuant to CPLR 2106 that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 2,064. The foregoing memorandum of law complies with the word count limit pursuant to Rule 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.



**STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL**

LETITIA JAMES  
Attorney General

STATE COUNSEL DIVISION  
Litigation Bureau

Writer Direct: (518) 776-2612

September 28, 2022

Office of the Clerk of the New York State Supreme Court  
Supreme and County Courts  
Albany County Courthouse  
Albany, NY

Re: ***No Fee Authorization Letter in ...***

*Elena Ruth Sassower, Center for Judicial Accountability, Inc. v. New York State Joint  
Commission on Public Ethics, et al.*  
Index No. 904235-22

Dear Clerk:

Submitted herewith for electronic filing please find Respondents' Reply memorandum and affirmation. As the Respondents are agencies of the State of New York or individuals sued in their capacity as agents of the State of New York, no fee is required to be paid for the filing of this motion.

Thank you kindly for your consideration of this matter.

Respectfully yours,  
/s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General

cc: Petitioners (via NYSCEF)

Petitioners' Oct. 4, 2022 Reply Affidavit in Further Support of Sept. 15, 2022 Motion [R.803-809]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

**October 4, 2022**

Petitioners/Plaintiffs,

**Reply Affidavit in Further  
Support of Petitioners'  
September 15, 2022 Motion  
for Sanctions, Summary  
Judgment & Other Relief**

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        ) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

Petitioners' Oct. 4, 2022 Reply Affidavit in Further Support of Sept. 15, 2022 Motion [R.803-809]

1. I am the above-named unrepresented individual petitioner, fully familiar with all the facts, papers, and proceedings heretofore had, and submit this reply affidavit in further support of petitioners' September 15, 2022 motion for sanctions, summary judgment, and other relief ([#93](#)).

2. As demonstrated by petitioners' accompanying reply memorandum ([#110](#)), which I wrote and to whose accuracy I swear, respondents have once again polluted the judicial forum with fraud and deceit, now by AAG Rodriguez' September 29, 2022 opposing affirmation ([#98](#)) and opposing memorandum of law ([#99](#)) to petitioners' September 15, 2022 motion ([#93](#)) – and his corresponding, largely identical, September 29, 2022 reply affirmation ([#101](#)) and reply memorandum of law ([#102](#)) in further support of respondents' August 18, 2022 cross-motion to dismiss the petition ([#79](#)).

3. For any fair and impartial tribunal, this should be unacceptable – and all the more so in a case such as this, with its far-reaching significance to the integrity of state governance and the public fisc.

4. Not revealed by AAG Rodriguez' four September 29, 2022 filings is that he is not merely an assistant attorney general, appearing “of Counsel” for respondent Attorney General James. He is “Deputy Bureau Chief” in the “Litigation Bureau” of the AG’s Office, at “The Capitol”, so indicated by the September 20, 2022 e-mail he sent me (Exhibit A). The e-mail had requested my consent to respondents submitting their reply papers on their August 18, 2022 cross-motion, due on September 21, 2022, on the same September 29, 2022 date on which their answering papers to petitioners' September 15, 2022 motion were due. My prompt e-mail response (Exhibit A) was as follows:

“I have no objection, so long as you submit: (1) your reply with respect to your August 18<sup>th</sup> cross-motion, due tomorrow; and (2) and your response to petitioners' September 15<sup>th</sup> motion, due on September 29<sup>th</sup>, as SEPARATE submissions, NOT combined.

Petitioners' Oct. 4, 2022 Reply Affidavit in Further Support of Sept. 15, 2022 Motion [R.803-809]

I also consent to your belated discharge of the AG's duties with respect to this lawsuit, beginning with withdrawing the August 18<sup>th</sup> cross-motion – and am available to discuss the ethically, constitutionally, and statutorily-mandated course, going forward.

Thank you.”

5. The reason I requested “SEPARATE submissions” was to prevent respondents from obscuring the ONLY issue relevant to determination of their August 18, 2022 cross-motion, namely, their reply to petitioners’ analysis of the cross-motion ([#88](#)), establishing it to be not merely frivolous, but a “fraud on the Court”. Obviously, if respondents could not rebut the analysis, their duty, by their reply papers, was to withdraw the cross-motion and then, by other appropriate action, to moot and mitigate the relief requested by petitioners’ motion and so-identify this in answering papers thereto.

6. Apart from AAG Rodriguez’ acknowledging e-mail to me (Exhibit A) and September 20, 2022 letter to the Court, apprising it of my conditioned consent to his request ([#96](#)), which the Court granted ([#97](#)), I received no communication from him or any one else in the AG’s office “to discuss the ethically, constitutionally, and statutorily-mandated course, going forward”. Instead, on September 29, 2022, AAG Rodriguez filed reply papers on respondents’ cross-motion that, to obscure that he had NO rebuttal to the analysis, were essentially replications of his simultaneously-filed opposition to petitioners’ motion.

7. Because these two sets of filings are materially identical, petitioners’ reply memorandum of law herein ([#110](#)), establishing the fraudulence of AAG Rodriguez’ opposition papers to petitioners’ motion, also establishes the fraud of his reply papers in further support of respondents’ cross-motion.

Petitioners' Oct. 4, 2022 Reply Affidavit in Further Support of Sept. 15, 2022 Motion [R.803-809]

8. As pointed out by petitioners' reply memorandum (at p. 3), these four filings of AAG Rodriguez, signed by him, each "frivolous" as defined by 22 NYCRR §130-1.1 *et seq.*, mandate imposition of maximum \$10,000 sanctions for each – a cumulative additional \$40,000 beyond the sanctions mandated by AAG Rodriguez' two prior "frivolous" filings: his June 27, 2022 dismissal motion ([#50](#)) and his August 18, 2022 dismissal cross-motion ([#79](#)). Petitioners expressly request such further sanctions, payable to the state, and costs, payable to them, pursuant to §130-1.1 *et seq.*, and, in conjunction therewith, the Court's issuance of an order to show cause to ascertain the identities of all other attorneys and respondents knowledgeable of, and consenting to, the September 29, 2022 filings, the June 27, 2022 motion, and the August 18, 2022 cross-motion for purposes of establishing their responsibility for the payment of sanctions and costs that are due.

9. As AAG Rodriguez' September 29, 2022 filings, unlike his June 27, 2022 motion and August 18, 2022 cross-motion, include two affirmations by him ([#98](#), [#101](#)), he is subject to the penalties of perjury, which petitioners expressly request. Such is especially appropriate in light of his knowledge that false swearing in an affirmation "constitutes perjury under Chapter 210 of the Penal Law", to which footnote 5 of petitioners' analysis of his August 18, 2022 cross-motion alerted him with respect to the August 18, 2022 affidavit of Emily Logue, director of investigations and enforcement at JCOPE and now CELG ([#81](#)), and the August 18, 2022 affirmation of Leslie Arp, chief of the case management unit for the New York State Inspector General ([#82](#)), and which petitioners' September 3, 2022 CPLR §2214(c) notice ([#85](#)) reinforced. As their perjurious sworn statements have not been withdrawn, petitioners expressly request that they, too, face the penalties of their perjury.

10. It should also be noted that, without explanation, AAG Rodriguez has, from the outset in June, been unacceptably transmogrifying the case caption, including by his four September 29,

Petitioners' Oct. 4, 2022 Reply Affidavit in Further Support of Sept. 15, 2022 Motion [R.803-809]

2022 filings which, in addition to other changes, insert the words: “For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules”, thereby concealing that petitioners’ lawsuit also seeks judgment pursuant to CPLR §3001 and Article 7-A.<sup>1</sup>

11. Finally, and germane to AAG Rodriguez’ conflicts of interest, referred-to at footnote 3 of my September 15, 2022 affidavit ([#87](#)) and bearing upon his reliance on the Third Department decision in *CJA v. Cuomo...DiFiore*, 167 AD3d 1406 (2018), as authority for why the attorney general does not suffer from conflicts of interest and this Court should not recuse itself<sup>2</sup> – which he puts forward notwithstanding the record before him establishes the fraudulence of that decision and respondent AG James’ litigation fraud in perpetuating it – he apparently works with the assistant attorney general whose litigation fraud procured the fraudulent decision of Acting Albany County Supreme Court Justice Denise Hartman that the Third Department affirmed.<sup>3</sup> That assistant attorney

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<sup>1</sup> I take this opportunity to alert the Court to its erroneous caption on its July 18, 2022 decision & order ([#76](#)), quite apart from its truncation of the respondents/defendants to omit the last two, AG James and Comptroller DiNapoli.

<sup>2</sup> AAG Rodriguez’ opposing memorandum of law to petitioners’ motion ([#99](#), at pp. 3, 5); AAG Rodriguez’ reply memorandum of law in further support of respondents’ cross-motion ([#102](#), at pp. 4, 6).

<sup>3</sup> My February 11, 2021 attorney misconduct complaint against respondent AG James – [Exhibit D-2 to the petition](#) – states as follows (at fn. 3), with respect to these two decisions:

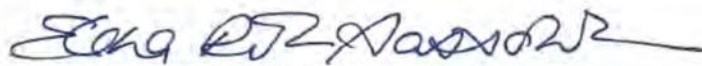
“The Appellate Division, Third Department’s December 27, 2018 memorandum and order is reported as: *aff’d*, 167 A.D.3d 1406 (3<sup>rd</sup> Dep’t 2018). Its unconstitutionality and fraudulence were comprehensively demonstrated by plaintiff-appellants’ [34-page, virtually line-by-line ‘legal autopsy’/analysis of it](#), enclosed with their March 26, 2019 letter to the Court of Appeals in support of their appeal of right. Its accuracy has NEVER been contested by anyone.

Judge Hartman’s November 28, 2017 decision and judgment is unreported and is cited as: Sup. Ct. Albany Cty., Index No. 5122-16, Hartman, J., Dec. 8, 2017. Its unconstitutionality and fraudulence were comprehensively demonstrated by plaintiff-appellants’ [22-page, virtually line-by-line, ‘legal autopsy’/analysis of it, annexed as part of their January 10, 2018 notice of appeal to the Appellate Division, Third Department](#), printed in the record on appeal at R9-R30 and encompassed at pp. 46-69 of the appeal brief. Its accuracy has NEVER been contested by anyone.” (underlining and hyperlinking in the original).

Petitioners' Oct. 4, 2022 Reply Affidavit in Further Support of Sept. 15, 2022 Motion [R.803-809]

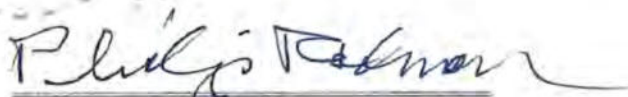
general is Adrienne Kerwin – and her name appears on the automated e-mail I received from AAG Rodriguez on July 7, 2022 (Exhibit B-2), in response to mine (Exhibit B-1).

12. My September 16, 2017 attorney misconduct complaint against AAG Kerwin based on her litigation fraud in *CJA v. Cuomo...DiFiore* – and in its *CJA v. Cuomo* predecessor – underlies and is identified as “EVIDENCE” (at pp. 4-6) by my February 11, 2021 complaint against AG James that is part of my March 5, 2021 complaint to JCOPE against AG James – Exhibits D-2 and D-1, respectively, to the petition. The September 16, 2017 attorney misconduct complaint, which, as indicated by the February 11, 2021 complaint (at p. 5, fn. 7), was part of the *CJA v. Cuomo...DiFiore* record, is herewith furnished as Exhibit C-1 to this affidavit, together with the first of its exhibits: my June 16, 2017 complaint to the Commission on Judicial Conduct against Acting Justice Hartman (Exhibit C-2).



ELENA RUTH SASSOWER

Sworn to before me this  
4<sup>th</sup> day of October 2022



Notary Public

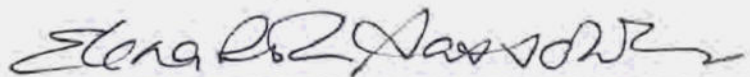
PHILIP L. RODMAN  
Notary Public, State of New York  
No. 02700398593  
Qualified in Westchester County  
Commission Expires 9-30-2023



Petitioners' Oct. 4, 2022 Reply Affidavit in Further Support of Sept. 15, 2022 Motion [R.803-809]

STATEMENT PURSUANT TO 22 NYCRR §202.8-b(a)

I, Elena Ruth Sassower, the unrepresented individual petitioner/plaintiff, affirm under penalties of perjury, that the total number of words in my October 4, 2022 reply affidavit in further support of petitioners' September 15, 2022 motion, including caption and signature block, is 1,678. The foregoing complies with the 4,200 word count limit permitted by 22 NYCRR §202.8-b(a). In determining the number of words, I have relied upon the word count of the word-processing system used to prepare the document.



ELENA RUTH SASSOWER

October 4, 2022

Ex. A to Petitioners' Oct 4, 2022 Reply Affidavit: Sept. 20, 2022 e-mail exchange [R.810-811]

**From:** Rodriguez, Gregory <Gregory.Rodriguez@ag.ny.gov>  
**Sent:** Tuesday, September 20, 2022 1:53 PM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
  
**Subject:** **RE: corrected --Conditional Consent -- RE: Center for Judicial Accountability, Inc. v. New York State Joint Commission on Public Ethics, et al.; Index No. 904235-22**

Ok. I will send a letter to the Court requesting that, with your consent, we be permitted to submit the reply and response to the Notice of Motion as separate submissions by September 29<sup>th</sup>.

Thanks,  
Greg

Gregory J. Rodriguez  
Deputy Bureau Chief  
Litigation Bureau  
New York State Office of the Attorney General  
The Capitol  
Albany, NY 12224  
Direct Line: (518) 776-2612  
E-Mail: [Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)

---

**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Tuesday, September 20, 2022 12:12 PM  
**To:** Rodriguez, Gregory <[Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)>

**Subject:** **corrected --Conditional Consent -- RE: Center for Judicial Accountability, Inc. v. New York State Joint Commission on Public Ethics, et al.; Index No. 904235-22**

Dear AAG/Deputy Litigation Bureau Chief Rodriguez,

I have no objection, so long as you submit: (1) your reply with respect to your August 18<sup>th</sup> cross-motion, due tomorrow; and (2) and your response to petitioners' September 15<sup>th</sup> motion, due on September 29<sup>th</sup>, as SEPARATE submissions, NOT combined.

I also consent to your belated discharge of the AG's duties with respect to this lawsuit, beginning with withdrawing the August 18<sup>th</sup> cross-motion – and am available to discuss the ethically, constitutionally, and statutorily-mandated course, going forward.

Thank you.

Elena Sassower

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914-421-1200

RECEIVED NYSCEF: 10/04/2022

NYSCEF DOC. NO. 105

EX. A to Petitioners' Oct 4, 2022 Reply Affidavit: Sept. 20, 2022 e-mail exchange [R.810-811]

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**From:** Rodriguez, Gregory <[Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)>**Sent:** Tuesday, September 20, 2022 10:21 AM**To:** [elena@judgewatch.org](mailto:elena@judgewatch.org)**Subject: Center for Judicial Accountability, Inc. v. New York State Joint Commission on Public Ethics, et al.; Index No. 904235-22**

Our office is in receipt of your September 15, 2022 Notice of Motion with a return date of October 6, 2022, and answering papers due September 29, 2022.

As you are aware, our reply relating to our cross-motion to dismiss is due tomorrow. We ask for your consent to allow us to submit both our reply to your opposition and response to your Notice of Motion on September 29, 2022.

Thanks,  
Greg

Gregory J. Rodriguez  
Deputy Bureau Chief  
Litigation Bureau  
New York State Office of the Attorney General  
The Capitol  
Albany, NY 12224  
Direct Line: (518) 776-2612  
E-Mail: [Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)

Ex. B-1 to Petitioners' Oct. 4, 2022 Reply Affidavit: July 7, 2022 e-mail [R.812-813]

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Thursday, July 7, 2022 10:34 AM  
**To:** 'Gandin Chambers'; mcollado@nycourts.gov  
**Cc:** gregory.rodriguez@ag.ny.gov  
**Subject:** In further support of TRO/Preliminary Injunction -- FOIL/records request -- Your nominations to the Commission on Ethics & Lobbying in Government, whose operations are to begin tomorrow, July 8, 2022

Rushing to pick up car rental & get to Kingston for 2 pm appearance on OSC.

Below is self-explanatory --

Sent to AG FOIL, via its portal, at 10:30 am: G000375-070722

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Thursday, July 7, 2022 10:19 AM  
**To:** 'records.access@exec.ny.gov' <[records.access@exec.ny.gov](mailto:records.access@exec.ny.gov)>; 'foil@nysenate.gov' <[foil@nysenate.gov](mailto:foil@nysenate.gov)>; 'marillar@nyassembly.gov' <[marillar@nyassembly.gov](mailto:marillar@nyassembly.gov)>; 'kleinf@nyassembly.gov' <[kleinf@nyassembly.gov](mailto:kleinf@nyassembly.gov)>; 'FOIL@osc.ny.gov' <[FOIL@osc.ny.gov](mailto:FOIL@osc.ny.gov)>

**Subject:** FOIL/records request -- Your nominations to the Commission on Ethics & Lobbying in Government, whose operations are to begin tomorrow, July 8, 2022

**"selection members" of the "ethics commission reform act of 2022"**

Governor Kathy Hochul  
Temporary Senate President Andrea Stewart-Cousins  
Senate Minority Leader Robert Ort  
Assembly Speaker Carl Heastie  
Assembly Minority Leader William Barclay  
Attorney General Letitia James  
Comptroller DiNapoli

Pursuant to [Part QQ of Education, Labor, Housing, and Family Assistance Budget Bill #S.8006-C/A.9006-C – the "ethics commission reform act of 2022"](#), you are the "selection members" whose nominations of the 11 members of the Commission on Ethics and Lobbying in Government are supposed to be vetted by the 15 law school deans comprising the "independent review committee". The Governor has three nominations, the Temporary Senate President and Assembly Speaker each have two nominations, and the Senate and Assembly Minority Leaders, the Attorney General and Comptroller each have one nomination.

In pertinent part, the [procedures](#) promulgated by the "independent review committee", which it [publicly announced on June 15<sup>th</sup>](#) and posted on its [website](#) state:

"•Prior to any nomination being sent to the IRC, the Selection Members shall publish the name(s) of the individual(s) they intend to nominate at least seven business days

Ex. B-1 to Petitioners' Oct. 4, 2022 Reply Affidavit: July 7, 2022 e-mail [R.812-813]

**before making such formal nomination. This information shall, at a minimum, be prominently posted on the Selection Member's website, provide a link by which the public may offer comments on the proposed nominee, and also be transmitted via a media advisory. At the time of publication, such information also shall be e-mailed directly to the IRC Chair.**

**• When making a formal nomination, each Selection Member shall provide to the IRC:** the name(s) and contact information of those nominated to serve on the Commission, the background investigation findings reported to them by the State Police and OGS for each nominee, **any written comments received by mail or electronically in support of or in opposition to the nomination**, along with any written materials a nominee may have submitted to the Selection Members, including but not limited to a complete resume or curriculum vitae, and any written statements regarding a nominee's qualifications from a Selection Member." (bold added).

The Commission on Ethics and Lobbying in Government is supposed to begin its operations tomorrow, July 8, 2022 – which is the 90<sup>th</sup> day after [Part QQ](#) became “a law”.

Have none of you yet formally nominated members to the Commission? I see nothing about your nominations on ANY of your websites, let alone “prominently posted” – and no “link by which the public may offer comments” on your “proposed nominee(s)”, whose names you were required to “publish” “at least seven days before making such formal nomination(s)”.

As for the [“independent review committee” website](#), I see no information posted about any announced nominees, or links to your websites pertaining thereto and to your media advisories.

Pursuant to FOIL (Public Officers Law Article VI), Senate Rule XIV (“Freedom of Information”), and Assembly Rule VIII (“Public Access to Records”), please furnish ALL publicly available records pertaining to:

- (1) your formal nominations – and the dates they were made;
- (2) where the nominations are “prominently posted” on your websites;
- (3) the links on your websites for public comment about your “proposed nominee(s)” – and when you “published” their names;
- (4) your “media advisor(ies)” – and the list of “media” to whom you sent the “advisories”, or where they are posted on your websites.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)

Ex. B-2 to Petitioners' Oct. 4, 2022 Reply Affidavit: AAG's July 7, 2022 auto-email [R.814]

**From:** Rodriguez, Gregory <Gregory.Rodriguez@ag.ny.gov>  
**Sent:** Thursday, July 7, 2022 10:35 AM  
**To:** Center for Judicial Accountability, Inc. (CJA)  
**Subject:** **Automatic reply: In further support of TRO/Preliminary Injunction -- FOIL/records request -- Your nominations to the Commission on Ethics & Lobbying in Government, whose operations are to begin tomorrow, July 8, 2022**

Hi, I will be out of the office on Thursday, July 7th and Friday, July 8th. If you need immediate assistance, please contact Adrienne Kerwin at Adrienne [Kerwin@ag.ny.gov](mailto:Kerwin@ag.ny.gov) or (518) 776-2608. Thanks.

**IMPORTANT NOTICE:** This e-mail, including any attachments, may be confidential, privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.



Ex. C-1 to Petitioners' Oct. 4, 2020 Reply Affidavit: Sept. 16, 2017 complaint to Grievance Committees [R.815-821]

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

September 16, 2017

TO: First Judicial Department Attorney Grievance Committee  
ATT: Jorge Dopico, Chief Attorney

Third Judicial Department Attorney Grievance Committee  
ATT: Monica Duffy, Chief Attorney

FROM: Elena Ruth Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)

RE: Testing the efficacy of New York's attorney grievance committees in policing New York's top attorney – The New York State Attorney General:  
Conflict-of-interest/misconduct complaint against New York State Attorney General Eric Schneiderman and his complicit attorney staff for their knowing and deliberate violations of New York's Rules of Professional Conduct, corrupting the judicial process in the citizen-taxpayer action *Center for Judicial Accountability, Inc. v. Cuomo, ...Schneiderman, et al.* (Albany Co. #5122-16) – & in its predecessor (Albany Co. #1788-14)

New York's attorney grievance committees are charged with protecting the public from attorneys who violate New York's Rules of Professional Conduct (22 NYCRR Part 1200). No attorney's violation of those Rules is of greater consequence to the People of the State of New York than that of their highest legal officer, the New York State Attorney General.

According to the Attorney General's website, <https://ag.ny.gov/>, he is the "People's Lawyer", who has "taken on the tough fights to protect New Yorkers – because he believes there has to be one set of rules for everyone, no matter how rich or powerful."<sup>1</sup> Does "one set of rules for everyone" apply to the attorney grievance committees' enforcement of New York's Rules of Professional Conduct?

This fully-documented conflict-of-interest/misconduct complaint is against Attorney General Eric Schneiderman (registration #1890037/NYC/1983) for knowingly and deliberately violating New York's Rules of Professional Conduct to corrupt the judicial process in a lawsuit in which he is a defendant, representing himself and his fellow defendants, all public officers, sued for corruption in connection with the New York State budget.

<sup>1</sup> See, Attorney General Schneiderman's website, at <https://ag.ny.gov/our-office> and <https://ag.ny.gov/about-attorney-general>.

Chief Attorneys Dopico &amp; Duffy

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The lawsuit is the citizen-taxpayer action *Center for Judicial Accountability, Inc. v. Cuomo, ...Schneiderman, et al.* (Albany Co. #5122-16) – the successor to the citizen-taxpayer action *Center for Judicial Accountability, Inc. v. Cuomo, ...Schneiderman, et al.* (Albany Co. #1788-14) – in which Attorney General Schneiderman was also a defendant, likewise representing himself and his co-defendant public officers, sued for corruption in connection with the New York State budget. There, identically, defendant Attorney General Schneiderman corrupted the judicial process by knowingly and deliberately violating New York's Rules of Professional Conduct.<sup>2</sup>

You are already familiar with these two citizen-taxpayer actions, as they underlie and substantiate CJA's October 14, 2016 conflict-of-interest/misconduct complaint against Albany County District Attorney P. David Soares and his fellow district attorneys for "grand larceny of the public fisc" with respect to the state budget and increases in their own district attorney salaries. Indeed, the October 14, 2016 complaint identified (at p. 7) that the district attorney salary increases are completely unlawful as they rest on judicial salary increases that are fraudulent, statutorily-violative, and unconstitutional – so demonstrated by the sixth, seventh, and eighth causes of action of the September 2, 2016 verified complaint in the second citizen taxpayer action, as to which plaintiffs are entitled to SUMMARY JUDGMENT.

In substantiation, the October 14, 2016 complaint furnished plaintiffs' September 30, 2016 reply memorandum of law in the second citizen-taxpayer action, accessible, with the entirety of the record of that citizen-taxpayer action and its predecessor, from CJA's webpage for the October 14, 2016 complaint: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/10-14-16-complaint-vs-soares-etc.htm>.

If you examined the September 30, 2016 reply memorandum of law – and its footnote 1 listing of plaintiffs' five reply memoranda of law in their first citizen-taxpayer action, dated May 16, 2014, June 6, 2014, September 22, 2015, November 5, 2015, and April 22, 2016 – you know that these six reply memoranda of law particularize defendant Attorney General Schneiderman's unremitting litigation fraud throughout the first citizen-taxpayer action and continuing to the second.

Subsequent to that September 30, 2016 reply memorandum of law, defendant Attorney General Schneiderman's litigation fraud has been unabated, sabotaging the second citizen-taxpayer action, as it had the first. Consequently, I now file this conflict-of-interest/misconduct complaint against defendant Attorney General Schneiderman and his culpable staff, *to wit*:

- (1) his "of counsel" Assistant Attorney General Adrienne Kerwin (registration #2941110/Albany/1999), who litigated for defendant Attorney General Schneiderman in both the first and second citizen-taxpayer actions – interrupted only by a brief parachuting in of Assistant Attorney General Helena Lynch (registration

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<sup>2</sup> The particulars of what transpired in the first citizen-taxpayer action are chronicled by plaintiffs' analysis/"legal autopsy" of the August 1, 2016 decision of Acting Supreme Court Justice/Court of Claims Judge Roger McDonough, annexed as Exhibit G to their September 2, 2016 verified complaint in the second citizen-taxpayer action.



Chief Attorneys Dopico &amp; Duffy

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#4383642/Albany/2006) in the second citizen-taxpayer action, likewise designated “of counsel”, who replicated AAG Kerwin’s *modus operandi* of litigation fraud;

(2) his supervisory and managerial personnel who, with defendant Attorney General Schneiderman, ignored my notice to them of the litigation fraud being committed by AAG Kerwin and AAG Lynch and their duty to take corrective steps. Among them:

- Litigation Bureau Chief Jeffrey Dvorin (registration #1844562/Albany/1983);
- Deputy Attorney General Meg Levine (registration #1846153/Albany/1983);
- Executive Deputy Attorney General for State Counsel Kent Stauffer (registration #1043926/NYC/1975);
- Chief Deputy Attorney General Janet Sabel (registration #2000248/NYC/1985); and
- Chief Deputy Attorney General Jason Brown (registration #2931442/NYC/1988).

The specific provisions of New York’s Rules of Professional Conduct knowingly and deliberately violated by defendant Attorney General Schneiderman and his supervising, managerial, and underling attorneys include:

- Rule 1.7: “Conflict of Interests: Current Clients”;<sup>3</sup>
- Rule 3.1: “Non-Meritorious Claims and Contentions”;
- Rule 3.3: “Conduct Before a Tribunal”;
- Rule 8.4: “Misconduct”;
- Rule 5.1: “Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers”;
- Rule 5.2: “Responsibilities of a Subordinate Lawyer”;
- Rule 8.3: “Reporting Professional Misconduct”.

Plaintiffs cited these and other provisions to Acting Supreme Court Justice/Court of Claims Judge Denise Hartman – the assigned judge – in support of requests for sanctions and disciplinary and criminal referrals of AAG Kerwin, AAG Lynch, and those in defendant Attorney General Schneiderman’s office responsible for supervising them. However, because Judge Hartman has a HUGE financial interest in the lawsuit and multitudinous relationships with the defendants arising

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<sup>3</sup> See also, Rule 1.11: “Special Conflicts of Interest for Former and Current Government Officers and Employees” and Rule 3.7 “Lawyer as Witness”. Defendant Attorney General Schneiderman was, prior to becoming attorney general, a member of the Legislature, participating in its constitutional, statutory, and rule violations with respect to the state budget and serving on “appropriate committees”, whose willful abandonment of oversight responsibilities, recited by the pleadings – as, for instance, the Senate Judiciary Committee. Certainly, too, pursuant to Rule 1.13, “Organization as Client”, the divergent interests of the “three men in a room” – defendants Flanagan, Heastie, and Cuomo – and defendants Senate and Assembly made it additionally improper for defendant Attorney General Schneiderman to represent both these individual and institutional defendants.

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from the 30 years she worked in the Attorney General's office, including under defendant Attorney General Schneiderman and, before him, under then Attorney General, now Governor, defendant Andrew Cuomo, who appointed her to the bench in May 2015, she colluded with defendant Attorney General Schneiderman in corrupting the judicial process. She has ignored his litigation misconduct, without adjudication – concealing this threshold issue from her fraudulent judicial decisions, ALL denying plaintiffs relief to which they are entitled, *as a matter of law*.

Judge Hartman's demonstrated actual bias, "protecting" defendant Attorney General Schneiderman from the consequences of his brazen violations of New York's Rules of Professional Conduct in order to "throw" the case to benefit herself and defendants is the subject of plaintiffs' June 16, 2017 conflict of interest/misconduct complaint against Judge Hartman, filed with the New York State Commission on Judicial Conduct (Exhibit A) – and of their September 11, 2017 supplement thereto (Exhibit B).

Suffice to say that Judge Hartman's concealment of, and willful failure to adjudicate, ALL threshold integrity issues pertaining to defendant Attorney General Schneiderman which plaintiffs' September 30, 2016 reply memorandum of law and subsequent advocacy presented, *to wit*:

- (1) plaintiffs' entitlement to sanctions and disciplinary and criminal referrals of AAGs Kerwin and Lynch and those responsible for their litigation fraud in supervisory and management levels of defendant Attorney General Schneiderman's office;
- (2) plaintiffs' entitlement to the disqualification of defendant Attorney General Schneiderman from representing his co-defendants on conflict-of-interest grounds;
- (3) plaintiffs' entitlement to the Attorney General's representation and/or intervention pursuant to State Finance Law Article 7-A and Executive Law §63.1,

reinforces the Committees' duty to proceed upon the *prima facie* evidence of disciplinary violations that Judge Hartman has corruptly refused to determine. Indeed, the Committees' duty, over and beyond commencing disciplinary proceedings against defendant Attorney General Schneiderman and his culpable lawyer staff, is to refer them to criminal authorities for prosecution of the fraud and other penal law violations that their disciplinary violations embrace – as these violations were all in furtherance of the "grand larceny of the public fisc" and other governmental corruption which is the gravamen of the citizen-taxpayer action.

No costly, time-consuming efforts are necessary to verify this conflict-of-interest/misconduct complaint. The *prima facie* proof of defendant Attorney General Schneiderman's litigation fraud by his culpable attorney staff – and of Judge Hartman's collusion therein to deny plaintiffs the SUMMARY JUDGMENT to which they are entitled, *as a matter of law*, on all ten causes of action



Ex. C-1 to Petitioners' Oct. 4, 2020 Reply Affidavit: Sept. 16, 2017 complaint to Grievance Committees [R.815-821]

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of their September 2, 2016 verified complaint – and on the reiterated ten causes of action of their March 29, 2017 verified supplemental complaint – is readily-available from CJA's website, [www.judgewatch.org](http://www.judgewatch.org). It posts the full record of the second citizen-taxpayer action, as likewise of the first, *via* the prominent homepage link: "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance" – to which a subtitle has been added: "A PAPER TRAIL OF LITIGATION FRAUD BY AG SCHNEIDERMAN, REWARDED BY FRAUDULENT JUDICIAL DECISIONS". Indeed, verification could not be simpler, as the litigation fraud of AAG Kerwin and AAG Lynch by their written submissions and oral advocacy is laid out, with near line-by-line precision, by plaintiffs' reply memoranda of law and my affidavits, annexing the transcripts of oral arguments and my notices to Attorney General Schneiderman and his supervisory and managerial attorneys.<sup>4</sup>

Accessible from the aforesaid link is a webpage for this conflict-of-interest/misconduct complaint against Attorney General Schneiderman and his culpable staff, which, for your convenience, posts plaintiffs' particularized analyses of AAG Kerwin and Lynch's written submissions – these being:

- (1) plaintiffs' September 30, 2016 reply memoranda of law – plus plaintiffs' four memoranda from their first citizen-taxpayer action, referred to by its footnote 1;
- (2) plaintiffs' May 15, 2017 reply memorandum of law;
- (3) plaintiffs' Exhibit E analysis, annexed to my moving affidavit in support of plaintiffs' June 12, 2017 order to show cause;
- (4) plaintiffs' August 25, 2017 reply memorandum of law.

The accuracy of these four analyses, each a road-map of the state of the record before Judge Hartman, is entirely undenied and undisputed by AAG Kerwin, by AAG Lynch, by defendant Attorney General Schneiderman, and by his supervisory and managerial attorneys. Their accuracy is also entirely undenied and undisputed by Judge Hartman, excepting the analysis presented by plaintiffs' August 25, 2017 reply memorandum of law, still *sub judice* before her. Needless to say, hard copies of these and all other documents constituting the record of plaintiffs' two citizen-taxpayer actions are available, upon request.

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<sup>4</sup> With respect to my notices to supervisory/managerial attorneys, see, in particular, my May 15, 2017 reply affidavit, at ¶¶11-14 and its referred-to annexed Exhibits 6 and 7 – and Exhibit 4; my August 25, 2017 reply affidavit, at ¶¶2-4 and its referred-to annexed Exhibit H-1. Also, see, in particular, in the first citizen-taxpayer action: my May 16, 2014 opposition affidavit, at ¶¶4, 26-36 and referred-to Exhibit AA; and my June 16, 2014 reply affidavit, at ¶¶3-10 and its referred-to annexed Exhibits CC and DD.

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Chief Attorneys Dopico & Duffy

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To expedite the Committees' handling of this easily-verified, fully-documented, conflict-of-interest/misconduct complaint against defendant Attorney General Schneiderman and his culpable attorney staff, a copy has already been furnished to them so that they can each be ready for your requests for a written response pursuant to 22 NYCRR §1240.7(b)(2). The e-mail receipt is annexed (Exhibit C).

Finally, consistent with the "Instructions for Filing a Complaint for Professional Misconduct against an Attorney", posted on the Third Department's Attorney Grievance Committee website, which state:

"Making a complaint against an attorney is a very serious matter. Before taking that step it is often wise for the complainant to first communicate with the attorney, preferably in writing, in an attempt to mutually work out a solution to existing problems or disputes..., if available. Once a complaint is filed, it cannot be withdrawn." (underlining added),

please be advised that the last document posted on CJA's website as comprising the record in the second citizen-taxpayer action is my August 28, 2017 e-mail to all the complained-against attorneys, from defendant Attorney General Schneiderman on down. Entitled "...NOTICE TO WITHDRAW YOUR OPPOSITION/CROSS-MOTION, returnable Sept. 1<sup>st</sup>", it concluded, as follows:

"I hereby reiterate the NOTICE that I gave you, on July 27, 2017, to WITHDRAW AAG KERWIN's OPPOSITION/CROSS-MOTION – which is your duty to do, as, likewise, to join in plaintiffs' application, by their August 25<sup>th</sup> reply papers, for Judge Hartman's disqualification and vacatur of her decision/orders – all fraudulent.

I am available to discuss this with you, directly, so that you can appropriately address the serious situation that is before you.

Thank you.

Elena Sassower, unrepresented plaintiff,  
acting on her own behalf  
& on behalf of the People of the State of New York & the Public Interest  
914-421-1200"

I received no response.



Ex. C-1 to Petitioners' Oct. 4, 2020 Reply Affidavit: Sept. 16, 2017 complaint to Grievance Committees [R.815-821]

Chief Attorneys Dopico &amp; Duffy

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September 16, 2017

Although your rules do not require complainants to swear to the truth of their attorney misconduct complaints, I eagerly do so – furnishing, as well, the attestation that Albany County District Attorney Soares includes on the complaint form of his so-called “Public Integrity Unit”:

“I understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.”

Thank you.



Enclosures:

- Exhibit A: CJA's June 16, 2017 conflict-of-interest/misconduct complaint against Judge Denise Hartman, filed with the NYS Commission on Judicial Conduct
- Exhibit B: CJA's September 11, 2017 supplement to the complaint
- Exhibit C: September 16, 2017 e-mail receipt to the complained-against attorneys, listed below as cc's

cc: New York State Attorney General Eric Schneiderman  
Chief Deputy Attorney General Jason Brown  
Chief Deputy Attorney General Janet Sable  
Executive Deputy Attorney General for State Counsel Kent Stauffer  
Deputy Attorney General Meg Levine  
Litigation Bureau Chief Jeffrey Dvorin  
Assistant Attorney General Adrienne Kerwin  
Assistant Attorney General Helena Lynch

New York State Commission on Judicial Conduct

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101  
White Plains, New York 10602

Tel. (914) 421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

BY E-MAIL

June 16, 2017

TO: New York State Commission on Judicial Conduct

FROM: Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)

RE: Conflict-of-interest/corruption complaint against Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman for willfully violating judicial disclosure/disqualification rules in order to “throw” a citizen-taxpayer action in which she is financially interested & has personal and professional relationships with defendants – Center for Judicial Accountability, et al. v. Cuomo, et al. (Albany Co. #5122-2016)

This follows up my conversation with Administrator Robert Tembeckjian, in Albany, on January 31, 2017, immediately following his testimony before the Legislature at its budget hearing on “public protection”. As he has for many years, Administrator Tembeckjian made an impassioned plea for more money for the Commission. I told him that notwithstanding the evidence establishing that the Commission is a corrupt façade, tossing out the most serious and fully-documented of facially-meritorious complaints that are the Commission’s duty to investigate, I nonetheless supported his request, as without requisite funding the Commission could not be anything but a façade.

I also told him that I would be testifying at that day’s hearing<sup>1</sup> – and that I had already testified at the

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<sup>1</sup> My intended testimony included a recommendation for increased Commission funding – and I may have mentioned this to Administrator Tembeckjian. However, the chairs of the Senate and Assembly fiscal committees cut off my testimony after the allotted ten minutes, not permitting me to “read[] very quickly” six recommendations pertaining to the budget that I begged to be permitted to recite. Increased funding for the Commission – and for the court-controlled attorney disciplinary system – were two of the six recommendations – consistent with recommendations I had made nearly a year earlier in a February 18, 2016 letter to the chairs and ranking members of the fiscal committees. The letter identified Administrator Tembeckjian’s plea “for a mere \$186,000” at the Legislature’s February 4, 2016 budget hearing on “public protection” and stated, in pertinent part:

“Notwithstanding, the Commission on Judicial Conduct is a corrupt façade, focusing on low level judges, while protecting higher and politically-powerful judges – as the Senate Judiciary Committee knew more than six years ago when it aborted its 2009 joint hearings on the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, without investigation of the testimony and documentary proof presented and proffered,



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budget hearing the day before, including about the Legislature's failure to oversee the Commission – and about CJA's unfolding citizen-taxpayer action pertaining to the budget and the unconstitutional, statutorily-violative, and fraudulent judicial salary increases embedded in the budget since 2012. Such judicial salary increases have cost taxpayers approximately \$200 million dollars over the past five years and have raised the salary of each state judge by approximately \$60,000 a year. I told Administrator Tembeckjian that I “owed the Commission” several judicial misconduct complaints pertaining to the judicial pay raises – including a complaint against Chief Judge Janet DiFiore, a named defendant in the unfolding citizen-taxpayer action.

With regard to that citizen-taxpayer action, *Center for Judicial Accountability, et al. v. Cuomo, et al.* (Albany Co. #5122-2016), I told Administrator Tembeckjian that when it was commenced, on September 2, 2016, it had been assigned to Acting Supreme Court Justice Denise Hartman – and that she had made no disclosure, not only as to her own \$60,000 a-year judicial salary interest in the lawsuit, or her non-salary other compensation interest – or the \$100,000 she would owe in the event of a claw-back – but of her personal and professional relationships with at least two defendants, arising from the 30 years she had worked in the Attorney General's office: under defendant Attorney General Schneiderman and, before him, under the then Attorney General, now Governor, defendant Cuomo, who had appointed her to the bench in 2015.

As a result of this non-disclosure, defendant Attorney General Schneiderman, representing both himself and his fellow defendants, felt confident that Judge Hartman would let his office get away with filing a legally insufficient, factually perjurious September 15, 2016 cross-motion to dismiss plaintiffs' September 2, 2016 verified complaint and to deny their accompanying order to show cause for a preliminary injunction. I so-stated this in plaintiffs' September 30, 2016 reply memorandum of law which sought threshold relief to preserve the integrity of the proceedings – the first of which was disclosure by Judge Hartman of the facts pertaining to her financial interests and relationships with the defendants, followed by threshold relief pertaining to the Attorney General's office, including sanctions against it for litigation fraud (at pp. 1-6, 42-53).

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without findings, and without a committee report – the Commission on Judicial Conduct certainly cannot do the minimal job it does without proper funding.” (February 18, 2016 letter, fn.7 (at p. 11), underlining in the original)

The February 18, 2016 letter is posted on CJA's webpage for this letter, accessible from CJA's homepage, [www.judgewatch.org](http://www.judgewatch.org), via the prominent link “CJA's Two Citizen-Taxpayer Actions to End NYS' Corrupt Budget ‘Process’ and Unconstitutional ‘Three Men in a Room’ Governance”. It leads to a link for the second citizen taxpayer action, whose menu item #9 entitled: “Securing Enforcement of the Citizen-Taxpayer Statute & Threshold Integrity Issues” contains a link for the webpage of this letter. The direct link to that webpage is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/6-16-17-complaint-cjc.htm> -- and it also posts the videos of the Legislature's January 30, 2017 budget hearing, at which I was the last witness testifying, and January 31, 2017 budget hearing at which I was also the last witness, preceded by Mr. Tembeckjian a short time earlier.

NYS Commission on Judicial Conduct

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Judge Hartman's response, by a December 21, 2016 decision, was to ignore the entirety of plaintiffs' reply papers: their September 30, 2016 reply memorandum of law and my accompanying September 30, 2016 reply affidavit. Indeed, by omitting, from her decision, any CPLR §2219(a) listing of "papers considered", she was able to conceal their very existence – and ALL the facts, law, and legal argument they presented, establishing plaintiffs' entitlement not only to the threshold integrity issues pertaining to herself and defendant Attorney General Schneiderman, but to summary judgment on all ten causes of action of their September 2, 2016 verified complaint, requested pursuant to CPLR §3211(c), as likewise to a preliminary injunction. In such fashion – and by purposefully violating the most fundamental black-letter law and adjudicative standards, Judge Hartman dumped nine of plaintiffs' causes of action, inexplicably preserving one: the sixth, pertaining to the budget statute that gave rise to the challenged judicial salary increases, as to which she concealed plaintiffs' summary judgment entitlement.

Based thereon, I told Administrator Tembeckjian that I anticipated filing a judicial misconduct complaint against Judge Hartman. This is what I am now doing, reinforced by all that has happened since:

- (1) plaintiffs' February 15, 2017 order to show cause for Judge Hartman's disqualification for demonstrated actual bias and interest and vacatur of her December 21, 2016 decision, and, if denied, disclosure – annexing, as its Exhibit U, an analysis of the December 21, 2016 decision, demonstrating it to be a "criminal fraud":

"falsify[ing] 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*" (analysis, at p. 1, underlining in the original);

- (2) Judge Hartman's May 5, 2017 decision thereon denying the February 15, 2017 order to show cause "in its entirety" and her simultaneous May 5, 2017 amended decision correcting her December 21, 2016 decision to include a CPLR §2219(a) listing;
- (3) plaintiffs' June 12, 2017 order to show cause for reargument/renewal/vacatur of Judge Hartman's May 5, 2017 decisions "and, in conjunction therewith, as well as if denied, disclosure" – demonstrating her May 5, 2017 decisions to be just as fraudulent as her December 21, 2016 decision and encompassing the supervening new facts relating to plaintiffs' March 29, 2017 order to show cause for summary judgment on their sixth cause of action, leave to supplement, and injunctive relief.



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That this is a facially meritorious misconduct complaint – mandating the Commission’s investigation pursuant to Judiciary Law §44.1(a) for what caselaw holds must be a Commission determination to remove Judge Hartman from the bench – is established by plaintiffs’ September 30, 2016 memorandum of law itself. There, under the heading: “PLAINTIFFS’ REQUESTED AFFIRMATIVE RELIEF TO SAFEGUARD THE INTEGRITY OF THESE JUDICIAL PROCEEDINGS” (at p. 42) is a first section entitled “The Court’s First Threshold Duty: To Disclose Facts Bearing Upon its Fairness & Impartiality”. In pertinent part, it reads (at pp. 43-44):

“A judge who fails to disqualify himself upon a showing that his ‘unworthy motive’ has ‘affect[ed] the result’ and, based thereon, does not vacate such ‘result’ is subject not only to reversal on appeal, but to removal proceedings:

*‘A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...’*, italics added by Appellate Division, First Department in *Matter of Capshaw*, 258 AD 470, 485 (1<sup>st</sup> Dept. 1940), quoting from *Matter of Droege*, 129 AD 866 (1<sup>st</sup> Dept. 1909).

In *Matter of Bolte*, 97 AD 551 (1<sup>st</sup> Dept. 1904), cited in the August 20, 1998 New York Law Journal column, ‘*Judicial Independence is Alive and Well*’, by the then administrator and counsel of the New York State Commission on Judicial Conduct, Gerald Stern, the Appellate Division, First Department held:

‘A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for *willfully* making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another...’ (at 568, emphasis in the original).

‘...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.’ (at 574).

§100.3F of the Chief Administrator’s Rules Governing Judicial Conduct provides that where a judge’s ‘impartiality might reasonably be questioned’ or he has an interest, he may:

‘disclose on the record the basis of the judge’s disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without

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participation of the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.'

The Commission on Judicial Conduct's annual reports explicitly instruct:

'All judges are required by the Rules of Judicial Conduct to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned.'

According to the Commission in its brief before the New York Court of Appeals in *Matter of Edward J. Kiley*, (July 10, 1989, at p. 20),

'It is cause for discipline for a judge to fail to disclose on the record or offer to disqualify under circumstances where his impartiality might reasonable (sic) be questioned.'"

Indeed, as of this date, nearly nine months since plaintiffs' September 30, 2016 memorandum of law first requested (at pp. 5-6, 42-44) that Judge Hartman disclose her financial interests and relationships, she has not only made no disclosure – nor even claimed to believe herself “impartial” – but upon plaintiffs bringing their February 15, 2017 order to show cause, whose first branch sought an order:

“disqualifying Acting Supreme Court Justice Denise Hartman for demonstrated actual bias and interest, pursuant to §100.3E of the Chief Administrator’s Rules Governing Judicial Conduct and Judiciary Law §14, and vacating her December 21, 2016 decision & order by reason thereof for fraud and lack of jurisdiction; and, if denied, disclosure, pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct, of facts bearing upon her fairness and impartiality” (underlining in the original),

her denial of this first branch, by her May 5, 2017 decision, concealed its request for disclosure – of which she made none.

Plaintiffs' June 12, 2017 order to show cause to reargue, renew, and vacate the May 5, 2017 decision points this out and its first branch also specifies disclosure in seeking an order:

“granting reargument and renewal, pursuant to CPLR §2221, of Judge Hartman’s May 5, 2017 decision and order and of her May 5, 2017 amended decision and order and, upon the granting of same, vacating them by reason of her demonstrated actual

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bias – and, in conjunction therewith, as well as if denied, disclosure, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of facts bearing upon her fairness and impartiality, specifically as to her financial interest and personal and professional relationships with defendants and their counsel, including in the supervisory ranks of the Attorney General's office" (underlining in the original).

My June 12, 2017 moving affidavit (at ¶¶8-10) more extensively describes the disclosure incumbent upon Judge Hartman in light of her May 5, 2017 decision – and quotes from the Commission's most recent annual report – issued March 2017 – where, under the heading "Conflict of Interests", the Commission repeats (at p. 14) what its prior annual reports state:

"All judges are required by the Rules to avoid conflicts of interest and to disqualify themselves or disclose on the record circumstances in which their impartiality might reasonably be questioned."

In the same paragraph, the Commission gives the following examples of the discipline it imposed in the past year for failure to disclose/recuse:

"Four judges were cautioned for various isolated or promptly redressed conflicts of interest. One judge failed to disclose that a petitioner's law firm employed the judge's former campaign treasurer. A part-time judge presided over a matter in which the plaintiff was a recent client of the judge's law firm. A third judge made a condolence visit to someone who was engaged in pending litigation before the judge. A fourth failed to disclose on the record in criminal cases that the judge's spouse was employed by the District Attorney's office." (2017 annual report, at p. 14, underlining added).

Compared to these "isolated or promptly redressed conflicts of interest" that the Commission nonetheless saw fit to make the subject of discipline, *via* letters of caution, this conflict of interest/corruption complaint against Judge Hartman is *a fortiori*. Her conflicts of interest are NOT "isolated or promptly redressed". To the contrary, by her May 5, 2017 decision, Judge Hartman continued to conceal plaintiffs' requests that she disclose her financial interests and relationships with defendants – and, on top of that, brazenly lied in denying plaintiffs' disqualification requests, stating:

"...plaintiff has not alleged a proper ground for disqualification. The undersigned Judge has no interest in this litigation or blood relation or affinity to any party hereto (*see People v. Call*, 287 AD2d 877, 878-879 [3d Dept 2001]; *People v Call*, 287 AD2d 877 [3d Dept 2001]; *Trimarco v. Data Treasury Corp.*, 2014 NY Slip Op 30664[U] [Sup Ct, Suffolk County 2014], citing *Paddock v. Wells*, 2 Barb. Ch. 331, 333 [Chancellor's Ct 1847]). Plaintiffs' conclusory allegations of bias and fraud are meritless." (at p. 2, underlining added).

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As pointed out by my June 12, 2017 moving affidavit (¶8), this conclusory two-sentence paragraph in her May 5, 2017 decision is an utter lie that no fair and impartial tribunal would make – and the proof is plaintiffs' Exhibit U analysis of her December 21, 2016 decision, annexed to their February 15, 2017 order to show cause – the accuracy of which Judge Hartman does not contest, nor defense counsel, defendant Attorney General Schneiderman.

As for Judge Hartman's cited decision of *Trimarco v. Data Treasury Corp.*, 2014 NY Slip Op 30664[U] [Sup Ct, Suffolk County 2014], it is a role model example of what she knowingly and deliberately did not do: make disclosure and confront, with specifics, the issue of her disqualification, even in the absence of a formal motion.

To give Judge Hartman a "head start" in furnishing the Commission with a "written reply to the complaint",<sup>2</sup> a copy will be annexed to my anticipated reply affidavit in further support of plaintiffs' June 12, 2017 order to show cause – assuming that Judge Hartman signs the order to show cause, which she has not yet done. Meantime, she is already on notice of my intended contact with the Commission: ¶3 of my June 12, 2017 moving affidavit stated that I would simultaneously be filing the order to show cause with it:

"to further accelerate enforcement of the fundamental precepts pertaining to judicial conduct, disqualification, and disclosure that plaintiffs' September 30, 2016 memorandum of law placed before [her] – and which [she] has knowingly, deliberately, and now repeatedly, violated."

Judge Hartman's corrupt conduct, hereinabove summarized, if committed in an ordinary case having no large issues and only private litigants, would – consistent with caselaw<sup>3</sup> – justify her removal from the bench. That it is committed here, to thwart a monumental citizen-taxpayer action against public officers who have utterly disabled our state government by their willful and deliberate violations of the New York State Constitution, statutory law, legislative rules, and caselaw, and who

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<sup>2</sup> Commission Policy Manual, Rule 2.6: "Scope of Investigation ... D. When investigation of a complaint has been authorized, the Administrator, or staff acting on the Administrator's behalf, may request a judge's written reply to the complaint or matters related thereto, unless the Commission has directed otherwise. (1) As a general practice, when staff requests such a written reply from the judge, the judge should be provided with a copy of the complaint. ... (4) The Administrator, or staff acting on the Administrator's behalf, should accommodate reasonable requests by the judge for additional time to prepare his or her written reply."

<sup>3</sup> In addition to the caselaw hereinabove cited and quoted: *Matter of Capshaw*, 258 AD 470, 485 (1940); *Matter of Droege*, 129 AD 866, 881 (1909); *Matter of Bolte*, 97 AD 551, 568 (1<sup>st</sup> Dept. 1904); see, *inter alia*, *Matter of Barlow*, 141 AD 640, 642 (1910); *Voorhees v. Kopler*, 239 AD 83, 84 (1933). And, of course, the 1987 law review article of former Commission Administrator Gerald Stern, "*Is Judicial Discipline in New York State a Threat to Judicial Independence?*", Pace Law Review, Volume 7, No. 2, (winter 1987), citing and discussing these and other cases, including with respect to failure to disqualify and make disclosure, under the title heading "*Disciplining Judges for On-Bench Conduct: Can 'Legal Error' Constitute Misconduct?*" (at pp. 303-322).



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have colluded in larcenous and opaque, slush-fund budgets – all here challenged – mandates not only her removal, but her referral to criminal authorities for indictment and felony prosecution with them.<sup>4</sup>

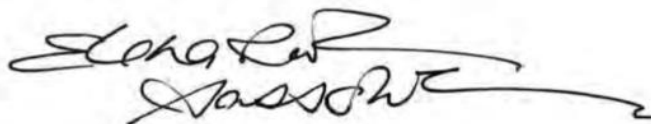
The full record of this citizen-taxpayer action, from which Judge Hartman's conflict-driven, fraudulent decisions and purposeful violations of mandatory standards and controlling law are readily-verifiable, is posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), accessible via the prominent homepage link: "CJA's Two Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance". For the Commission's convenience, a direct link to the lawsuit record will be posted on CJA's webpage of this letter (see fn. 1).

I am available to assist the Commission, to the max, be interviewed, preferably under oath, and to provide the originals of the posted documents.

Needless to say, if the Commission's judicial members, each having the same financial interest as Judge Hartman – a \$60,000 yearly salary interest, a substantial further interest in non-salary benefits, and a \$100,000 liability in the event of a claw back – cannot be fair and impartial by reason thereof, or if Commissioners cannot be fair and impartial by reason of their relationships with the public officers who appointed them, all actually or effectively named defendants herein, or because of their relationships with any other defendant, or for any other reasons, their duty is to recuse themselves.<sup>5</sup>

And, of course, the duty of disclosure and recusal falls not only on Commission members, but on Commission staff, most importantly, its long-time Administrator, Robert Tembeckjian, and long-tenured Clerk, Jean Savanyu.

Thank you.



<sup>4</sup> Commission Policy Manual, Rule 2.10: "Referrals to District Attorneys — The Commission may refer a matter to a District Attorney or other prosecuting agency when it determines that there is evidence that a crime may have been committed...."

<sup>5</sup> Commission Policy Manual, Rule 5.3: "Disqualification of Commission Members -- ...(B) Any member of the Commission should disqualify himself/herself from a matter if his/her impartiality might reasonably be questioned. In determining whether to disqualify from a matter, a Commission member should be guided by the disqualification standards set forth for judges in Section 100.3(E) of the Rules Governing Judicial Conduct. A Commission member need not reveal the reason for his/her disqualification...";

Code of Ethics for Members of the New York State Commission on Judicial Conduct, Rule 2: "Rule with respect to conflicts of interest. No member of the Commission should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his/her duties in the public interest."; Rule 3: "Standards... h. A member of the Commission should endeavor to pursue a course of conduct which will not raise suspicion among the public that s/he is likely to be engaged in acts that are in violation of his/her trust."

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

**Index #904235-22**

Petitioners/Plaintiffs,

-against-

**October 4, 2022**

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

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

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

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

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

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

Respondents/Defendants.

-----X  
**PETITIONERS' REPLY MEMORANDUM OF LAW**  
**in Support of Sanctions against Respondent Attorney General Letitia James,**  
**Culpable Attorneys of the Office of the Attorney General,**  
**and Respondents for their Litigation Fraud,**  
**Disqualification of the Attorney General,**  
**Summary Judgment, & Other Relief**

ELENA RUTH SASSOWER, Unrepresented Petitioner/Plaintiff,  
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Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

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Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

## INTRODUCTION

This memorandum of law is submitted in reply to respondent Attorney General James' September 29, 2022 opposition to petitioners' September 15, 2022 motion for sanctions, summary judgment, and other relief. Consisting of an opposing affirmation ([#98](#)) and opposing memorandum of law ([#99](#)) by Assistant Attorney General Gregory Rodriguez, appearing "of Counsel", both his affirmation and memorandum rest on brazen fraud and deceptions – essentially the same as fill his September 29, 2022 reply affirmation ([#101](#)) and reply memorandum of law ([#102](#)) to petitioners' September 15, 2022 opposition to his August 18, 2022 cross-motion to dismiss the verified petition.

The overarching fraud is that petitioners' September 15, 2022 motion is conclusory and unsupported – and that respondents' August 18, 2022 cross-motion is un rebutted. This, AAG Rodriguez accomplishes by concealing, *in toto*, the content of petitioners' analysis of the August 18, 2022 cross-motion. The analysis is Exhibit A ([#88](#)) to petitioners' September 15, 2022 affidavit ([#87](#)) in opposition to the cross-motion ([#79](#)) and in support their motion ([#93](#)).

Because essentially ALL seven branches of petitioners' September 15, 2022 motion rest on the analysis, it is specified by their notice of motion from among the exhibits to their September 15, 2022 affidavit.

The state of the record with respect to the analysis – and with respect to the September 15, 2022 affidavit of which it is part and petitioners' September 15, 2022 memorandum of law based thereon ([#94](#)) – mandates the granting of all the relief the notice of motion seeks.

No fair and impartial tribunal could hold otherwise, let alone in a case of such magnitude and significance to "the People of the State of New York & the Public Interest", on whose behalf petitioners expressly act.



Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

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

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

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

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

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

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

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

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

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

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

This is flagrant LIE. The analysis ([#88](#)) completely rebuts respondents’ August 18, 2022 cross-motion, demonstrating it to be founded, throughout, on fraud, perjury, and total annihilation of litigation standards. For AAG Rodriguez to pretend the contrary and “fully stand by” the August 18, 2022 cross-motion – which he presumably does with the knowledge and approval of his superiors in the AG’s office, including respondent AG James and her co-respondents – not only reinforces petitioners’ entitlement to the granting of all branches of their September 15, 2022 motion, but, as to the first branch, mandates imposition of an additional \$40,000 in maximum sanctions pursuant to 22 NYCRR §130.1-1 *et seq.* – \$10,000 for each of the four “frivolous” September 29, 2022 filings signed by AAG Rodriguez ([#98](#), [#99](#), [#101](#), [#102](#)).

**THE RECORD WITH RESPECT TO**  
**THE FIRST THREE BRANCHES OF PETITIONERS’ MOTION<sup>1</sup>**  
*Relief Pursuant to 22 NYCRR §130-1.1 et seq., Judiciary Law §487,*  
*& §100.3D of the Chief Administrators Rules Governing Judicial Conduct*

AAG Rodriguez’ opposition to the first three branches of petitioners’ motion is at Point II of his opposing memorandum of law ([#99](#), at pp. 2-3) titled: “Petitioners’ Request for Sanctions Should Be Denied” and at ¶¶6-8 of his opposing affirmation ([#98](#)).

His opposing memorandum purports that these three branches “should be flatly denied” because they are based on “unsubstantiated allegations” of litigation misconduct. He states:

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<sup>1</sup> These three branches are particularized at pages 1-7 of petitioners’ September 15, 2022 memorandum of law ([#94](#)) and ¶4 of their September 15, 2022 affidavit ([#87](#)).

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

“[petitioners’] papers are completely devoid of any allegations whatsoever to even suggest sanctionable conduct. In the first, second and third ‘branch of relief’ in Petitioners’ Memorandum of Law, Petitioners argue, in wholly conclusory fashion, that Respondents’ Cross-Motion to Dismiss is frivolous, ‘fashioned in fraud’, and completely without merit. *Id.*, pp. 1-7” (underlining added).

Utter fraud. The referred-to “pp. 1-7” of petitioners’ memorandum of law ([#94](#)) rest on their 29-page, single-spaced analysis of the cross-motion ([#88](#)) – the accuracy of which AAG Rodriguez has not denied or disputed because it is completely accurate, mandating the relief sought by the first three branches of petitioners’ motion, *as a matter of law*, by any court adhering to law.

Of the same fraudulent ilk are ¶¶6-8 of AAG Rodriguez’ opposing affirmation ([#98](#)), purporting the cross-motion to be “legally-sound and an appropriate response to the Petition”, that petitioners have a “complete misunderstanding of the law, litigation and the power of the court”, and that “If anything, Petitioners’ conduct during this litigation is the type of behavior that is sanctionable.” Here, too, petitioners’ analysis is dispositive of these further frauds.

**THE RECORD WITH RESPECT TO  
THE FOURTH BRANCH OF PETITIONERS’ MOTION<sup>2</sup>**

*Disqualifying Attorney General James for Violation of Executive Law §63.1  
& Rule 1.7 of the New York Rules of Professional Conduct*

AAG Rodriguez’ opposition to the fourth branch of petitioners’ motion is at Point III of his opposing memorandum of law ([#99](#), at pp. 3-4) titled: “Petitioners’ Request that the Attorney General be Disqualified Should be Denied” and at ¶¶4-5 of his opposing affirmation ([#98](#)).<sup>3</sup> These fraudulently conceal:

- that respondent AG James’ violation of Executive Law §63.1 is evidentiarily proven by petitioners’ analysis of the cross-motion, as it establishes that she has NO legitimate defense to the petition’s ten causes of action and that, consequently, the

<sup>2</sup> This fourth branch is particularized at pages 7-10 of petitioners’ September 15, 2022 memorandum of law ([#94](#)) and ¶¶7-9 of their September 15, 2022 affidavit ([#87](#)).

<sup>3</sup> See, comparably, AAG Rodriguez’ reply memorandum of law, Point IV, identically-titled ([#102](#), at p. 4) and ¶¶8-9 of his reply affirmation ([#101](#)).

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“interest of the state” – upon which Executive Law §63.1 predicates the attorney general’s litigation posture – is with petitioners who are, therefore, entitled to the attorney general’s representation/intervention pursuant to Executive Law §63.1 and the citizen-taxpayer action statute, State Finance Law Article 7-A;

- that pursuant to Executive Law §63.1, respondent AG James’ “preeminent duty of representation is...to the state” – and that “where there is “a conflict of duties, the attorney general’s primary obligation is to the body politic rather than to its officers, departments, commissions, or agencies”, 7 Am. Jur.2d §12.”

Neither in AAG Rodriguez’ Point III or opposing affirmation is there even a claim that respondent AG James’ representation of her co-respondents is pursuant to Executive Law §63.1 or that it rests on a determination of the “interest of the state” – and plainly it is not, as there is no state interest in corrupting the judicial process by litigation fraud to overcome the absence of a legitimate defense. Nor is there even a claim that respondent AG James does not suffer from serious and substantial conflicts of interest – and she plainly has interests diametrically opposite to those of the state in perpetuating the corruption of state entities having ethics and investigative jurisdiction over her, especially where, as here, the office of the AG and she herself are the subject of complaints, filed with JCOPE – which are exhibits to the petition and at issue in the litigation .

As AAG Rodriguez has furnished neither legal authority nor facts entitling respondent AG James to be representing her co-respondents, rather than petitioners, she must be disqualified, pursuant to Executive Law §63.1 and Rule 1.7 of the New York Rules of Professional Conduct, based on the facts established by petitioners’ analysis, uncontested by her.

Finally, with respect to AAG Rodriguez’ Point III quoting of *CJA v. Cuomo...DiFiore*, 167 AD3d 1406, 1408-09 (3<sup>rd</sup> Dept. 2018), and his reference to “the reasons articulated by this Court during oral argument on July 7, 2022” for the proposition that petitioners’ requested disqualification of AG James is “wholly without merit” and “should be denied”, both are further, outrageous frauds by him, based on the fully-documented facts in the record that he has not contested, including:

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- page 22 of the analysis ([#88](#)), furnishing, by hyperlinks, the proof that the Third Department appellate decision in *CJA v. Cuomo...DiFiore* is fraudulent – the same as identified and furnished by ¶87(8) of the petition, *to wit*, [petitioners' analysis of the decision](#) which they presented to Court of Appeals by their [March 26, 2019 letter in support of an appeal of right](#), whose accuracy was [uncontested](#);
- [Exhibit D-3 to the petition \(#12\)](#), which is petitioners' February 7, 2021 judicial misconduct complaint against the Court of Appeals judges and Third Department justices pertaining the fraudulent *CJA v. Cuomo...DiFiore* appellate decision, which, together with petitioners' February 11, 2021 attorney misconduct complaint against AG James for her litigation fraud at the Court of Appeals in obstructing review of that decision ([#Exhibit D-2 \(#11\)](#)), is part of their March 5, 2021 complaint against her to JCOPE ([Exhibit D-1 \(#10\)](#));
- ¶¶8-9 of petitioners' September 15, 2022 affidavit ([#87](#)), quoting, from the transcript of the July 7, 2022 oral argument ([#91](#)) as to the Court's "reasons" for denying the attorney general's disqualification, *to wit*, its bald assertion: "The state of New York requires the state attorney general to represent the state in all matters" and because petitioners' "allegation" with respect to the attorney general was "without factual support" – both not only false, but non-responsive to what petitioner Sassower beseeched the Court at the oral argument – and what petitioners' order to show cause sought as "other and further relief":

“requiring Attorney General James, a respondent/defendant, to furnish a sworn statement that her representation of respondents/defendants, rather than petitioners/plaintiffs, is based on a determination that they have a ‘merits’ defense to this case, such that representing them is in the ‘interest of the state’, as Executive Law §63.1 requires; and (ii) that her own direct financial and other interests in the case, as in petitioners/plaintiffs’ March 5, 2021 complaint against her filed with respondent/defendant Joint Commission on Public Ethics (Exhibit D to the petition/complaint), does not require that she secure independent, outside counsel to determine the ‘interest of the state’ pursuant to Executive Law §63.1 – and petitioners/plaintiffs’ entitlement to representation”.

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

**THE RECORD WITH RESPECT TO**  
**THE FIFTH BRANCH OF PETITIONERS' MOTION**<sup>4</sup>  
*Summary Judgment Pursuant to CPLR §3211(c)*

AAG Rodriguez' opposition to the fifth branch of petitioners' motion is at Point I of his opposing memorandum of law ([#99](#), at pp. 1-2) titled: "Plaintiffs' Request that Respondents' Motion to Dismiss be Converted to a Motion for Summary Judgment Should be Denied". Nothing additional is presented by his opposing affirmation ([#98](#)).

AAG Rodriguez' sole argument for why conversion should be denied – for which he offers no caselaw or other law – is his single sentence: "...as argued by Respondents' moving papers, the Petition/Complaint ('Petition') fails to state a cause of action as a matter of law, and no extrinsic evidence is necessary to dispose of this case."

This is fraud. "Respondents' moving papers" – by which AAG Rodriguez means his August 18, 2022 cross-motion – sought the petition's dismissal on grounds including "documentary evidence" pursuant to CPLR §3211(a)(1), in other words, "extrinsic evidence necessary to dispose of this case". Indeed, pages 12-13 of petitioners' September 15, 2022 memorandum of law ([#94](#)), to which AAG Rodriguez cites, identified the "documentary evidence" ground of his cross-motion, for which, in fact, he had NO evidence.

In any event, for AAG Rodriguez to argue as if he has a viable cross-motion based on failure to state a cause of action – when, without contest from him, petitioners' analysis resoundingly exposed that such ground for dismissal was spurious, crafted on flagrant concealment and falsification of all the material allegations of the petition establishing its ten causes of action – is a further fraud on which now relies because he has NO defense to the conversion sought.

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<sup>4</sup> This fifth branch is particularized at pages 12-13 of petitioners' September 15, 2022 memorandum of law ([#94](#)), where it is erroneously placed as the sixth branch, and ¶¶2-3, 5 of their September 15, 2022 affidavit ([#87](#)).

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

As petitioners' memorandum of law identifies ([#94](#), p. 13), quoting from the analysis, the pervasive fraud and deceit of respondents' cross-motion reinforces petitioners' entitlement to summary judgment on all ten causes of action of their June 6, 2022 verified petition ([#1](#)), *as a matter of law*. All ten state a cause of action, with the first and fifth causes of action additionally stating causes of action by petitioners' September 1, 2022 verified amendment thereto ([#84](#)).<sup>5</sup>

**THE RECORD WITH RESPECT TO**  
**THE SIXTH BRANCH OF PETITIONERS' MOTION**<sup>6</sup>  
*Directing Compliance with CPLR §2214(c) or, alternatively, CPLR §3124*

AAG Rodriguez' opposition to the sixth branch of petitioners' motion is at Point V of his opposing memorandum of law ([#99](#), at pp. 6-7) titled: "Petitioners' Request to Compel Respondents to Furnish the Court with Responses to Petitioners' June 28, 2022 and September 3, 2022 CPLR 2214(c) 'Notice of Papers to be Furnished to the Court' and September 15, 2022 CPLR 3120 Notice of Discovery and Inspection Should be Denied" and at ¶¶ 9-11 of his opposing affirmation ([#98](#)).<sup>7</sup> His opposition rests on material concealment, falsehoods, and NO caselaw.

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<sup>5</sup> AAG Rodriguez' only response to this verified amendment ([#84](#)) is by a footnote to his reply memorandum of law ([#102](#), at p. 4, fn. 2), which reads:

"Petitioners filed a document entitled 'Verified Amendment to June 6, 2022 Verified Petition/Complaint' which purportedly attempts to add additional language to certain paragraphs in the initial Verified Petition/Complaint and alleges further outlandish and unsupported claims of 'corruption and larceny' against various Respondents. While this was not brought pursuant to any provision of the CPLR, there is nothing contained in the new allegations that rebut Respondents' showing in their original moving papers."

There is nothing "outlandish and unsupported" in the "additional language" of the September 1, 2022 verified amendment, whose first sentence identifies the "provision of the CPLR" pursuant to which it is brought: §3025(a).

<sup>6</sup> This sixth branch is particularized at pp. 10-12 of petitioners' September 15, 2022 memorandum of law ([#94](#)), where it is erroneously placed as the fifth branch, and ¶6 of their September 15, 2022 affidavit ([#87](#)).

<sup>7</sup> See, comparably, AAG Rodriguez' reply memorandum of law, Point VI, identically-titled ([#102](#), at pp. 6-7) and ¶10 of his reply affirmation ([#101](#)).

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

First, AAG Rodriguez' Point V conceals the content of pages 10-12 of petitioners' memorandum of law ([#94](#)), to which he cites without contesting their accuracy. Thus, AAG Rodriguez' Point V:

- does not contest that the June 28, 2022 CPLR §2214(c) notice ([#60](#)) correctly specified the “papers” “necessary to the consideration of the questions involved” upon the hearing of the June 23, 2022 notice of petition and the hearing of the order to show cause for a TRO/preliminary injunction, signed, as amended, on July 8, 2022.
- does not contest that the September 3, 2022 CPLR §2214(c) notice ([#85](#)) correctly specified the “papers” “necessary to the consideration of the questions involved” upon the hearing of the June 23, 2022 notice of petition, the hearing of the order to show cause for a TRO/preliminary injunction, signed, as amended, on July 8, 2022, and the hearing of respondent's August 18, 2022 cross-motion.

Second, AAG Rodriguez' opposing affirmation ([#98](#)), whose ¶¶ 9 and 10 materially replicate his Point V, contains a ¶11 not contained in his Point V, reading:

“Moreover, in response to Petitioners' assertion that Respondents have a duty to provide documents listed in Petitioners' ‘CPLR 2214(c) Notices of Papers to be Furnished to the Court,’ to the extent that such documents exist, they are publicly available either online or through the relevant public relations offices of the Assembly or Senate. In fact, upon information and belief, Petitioners have received some of these documents in response to FOIL requests. Since the Petitioners have failed to identify any documents exclusively in the possession of Respondents, or that are at all relevant to the Petition, any relief sought by Petitioners in connection with their ‘Notice of Papers to be Furnished the Court’ should be denied.”

This is false and deceitful:

- petitioners are entitled to respondents' responses as to which of the documents sought by their CPLR §2214(c) notices do not “exist” – as when documents required to exist or which should properly exist are purported not to exist, this is evidentiary;
- AAG Rodriguez furnishes no law for the proposition appearing only in his affirmation that documents sought to be produced by a CPLR §2214(c) notice must be “exclusively in the possession” of the adverse parties – and, obviously, anything not directly produced by respondents would be subject to challenge as to its authenticity;



Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

- most of the documents requested by petitioners' CPLR §2214(c) notices are exclusively in respondents' possession or, to the limited extent publicly-available, not complete;

Moreover, it is flagrant fraud for AAG Rodriguez' affirmation to assert that petitioners' CPLR §2214(c) notices "failed to identify any documents...that are at all relevant to the Petition" – and he furnishes not a single example of a supposedly not-relevantly requested document. Obvious from even fleeting inspection of the notices ([#60](#), [#85](#)) is that each requested document is relevant to petitioners' entitlement to summary judgment on their ten stated causes of action – and to further proving respondents' flagrant fraud by their cross-motion to dismiss the petition.

Third, AAG Rodriguez falsely implies that NO "papers" are "necessary to the consideration of the questions involved" upon the hearing of respondent's cross-motion and, inferentially, upon the hearing of petitioners' motion. Thus, his Point V states:

"Respondents' pre-discovery Cross-Motion to Dismiss was based on legal deficiencies in the Petition (NYCEF No. 1). Namely, a failure to state a claim for which relief can be granted, lack of standing, non-justiciability, immunity and improper parties. NYCEF No. 79. Thus, Petitioners' 'CPLR 2214 Notice[s] of Papers to be Furnished to the Court' should be denied."

Comparably, ¶9 of his opposing affirmation states:

"Respondents' pre-discovery Cross-Motion to Dismiss was based on legal deficiencies in the Petition; namely, a failure to state a claim for which relief can be granted, lack of standing, non-justiciability, immunity and improper parties. NYCEF Nos. 79, 80. Thus, Petitioners' second 'CPLR 2214 Notice of Papers to be Furnished to the Court' should be denied."

This is a deceit – and presumably the reason why AAG Rodriguez omits from these paragraphs that respondents' cross-motion was also based on supposed "documentary evidence" pursuant to CPLR §3211(a)(1).

Consequently, AAG Rodriguez' opposition to an order compelling respondents' compliance with petitioners' June 28, 2022 and September 3, 2022 CPLR §3214(c) notices for production of

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

“papers...necessary to the consideration of the questions involved” is based on NO law and fraud and deceit.

As for AAG Rodriguez’ response to the alternative relief sought by the sixth branch of petitioners’ notice of motion, *to wit*,

“pursuant to CPLR §3124, compelling respondents’ compliance to those same two notices, as embodied by petitioners’ September 15, 2022 notice for production and inspection pursuant to CPLR §3120”,

he relies on CPLR §3214(b), which he quotes, for the proposition that service of a motion pursuant to CPLR §3211 “stays disclosure until determination of the motion unless the court orders otherwise”. Based on the record herein, the Court’s duty is to “otherwise” order, so that every last piece of evidence establishing petitioners’ obvious entitlement to their ten stated causes of action is disgorged – and, with it, respondents’ fraud before this Court.

**THE RECORD WITH RESPECT TO  
THE SEVENTH BRANCH OF PETITIONERS’ MOTION**<sup>8</sup>

*Disclosure by the Court of its Interests, Giving Rise to its Manifested Actual Bias*

AAG Rodriguez’ opposition to the seventh branch of petitioners’ motion is at Point IV of his opposing memorandum of law ([#99](#), at pp. 4-5) titled: “Petitioners Do Not Identify Any Valid Ground to Disqualify Judge Gandin from Adjudicating this Litigation”<sup>9</sup> and at ¶12 of his opposing affirmation ([#98](#)). His opposition is founded on fraud, deceit, and material concealment – beginning with the relief sought by the seventh branch, *to wit*:

- (a) disclosure by the Court, pursuant to §100.3F of the Chief Administrator’s Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner’s July 6, 2022 affidavit in support of their order to show cause, and further manifested by

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<sup>8</sup> This seventh branch is particularized at pp. 14-17 of petitioners’ September 15, 2022 memorandum of law ([#94](#)) and ¶¶9-10 of their September 15, 2022 affidavit ([#87](#)).

<sup>9</sup> See, comparably, AAG Rodriguez’ reply memorandum of law, Point V, identically-titled ([#102](#), at pp. 5-6). His reply affirmation ([#101](#)) contains no paragraph pertaining to this Point V.

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

the Court's oral decision at the July 7, 2022 argument of petitioners' order to show cause for a TRO/preliminary injunction;

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

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

### CONCLUSION

Based on the record before this Court, petitioners, "acting on their own behalf and on behalf of the People of the State of New York & the Public Interest", are entitled to all the relief sought by their September 15, 2022 motion, *as a matter of law*.

  
ELENA RUTH SASSOWER

October 4, 2022  
White Plains, New York

Petitioners' Oct. 4, 2022 Reply Memorandum of Law in Support of Sept. 15, 2022 Motion [R.830-844]

**STATEMENT PURSUANT TO 22 NYCRR §202.8-b(a)**

I, Elena Ruth Sassower, the unrepresented individual petitioner/plaintiff, affirm under penalties of perjury, that the total number of words in petitioners' October 4, 2022 reply memorandum of law in further support of petitioners' September 15, 2022 motion, excluding cover and table of contents, is 3,675. The foregoing complies with the 4,200 word count limit permitted by 22 NYCRR §202.8-b(a). In determining the number of words, I have relied upon the word count of the word-processing system used to prepare the document.



ELENA RUTH SASSOWER

October 4, 2022

**CENTER for JUDICIAL ACCOUNTABILITY, INC.**

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: [mail@judgewatch.org](mailto:mail@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

November 25, 2022

Supreme Court Justice David M. Gandin  
Ulster County Supreme Court  
285 Wall Street  
Kingston, New York 12401

RE: Center for Judicial Accountability, Inc., et al. v. JCOPE, et al. (#904235-22)  
NOTICE to correct incorrect caption and preserve hard copy of NYSCEF filings, etc.

In the Court's haste to file its indefensible, fraudulent, and jurisdictionally-void "DECISION, ORDER, and JUDGMENT" in the above-captioned case on the day before Thanksgiving, at 3:32, 3:33, and 3:34 in the afternoon – indeed, filing it six separate times ([#111](#), [#112](#), [#113](#), [#114](#), [#115](#), [#116](#)) – it used an incorrect caption.

This is the same incorrect caption as the Court used for its only prior written decision, dated July 18, 2022, which it filed on July 20, 2022 ([#76](#)).

Each incorrect caption repeats my name, so that it appears twice – the first time as the lead petitioner/plaintiff, when I am the second, AFTER the Center for Judicial Accountability, Inc. – so reflected by our initiating June 6, 2022 petition/complaint ([#1](#)) and all our subsequent filings<sup>1</sup>

The consequence is that should the decision be published, it will appear with the incorrect shortened case caption, *Sassower, et al. v. JCOPE, et al.*, rather than *Center for Judicial Accountability, Inc., et al. v. JCOPE, et al.*

Please correct same so that this does not happen.

Within the next month petitioners/plaintiffs will file a notice of appeal to the Appellate Division, Third Department and, thereafter, complaints against the Court with supervisory, ethics, and criminal authorities, particularizing the Court's obliteration of ALL cognizable standards by its decision, *readily verifiable* from the most cursory comparison of the decision with the [NYSCEF](#) record,

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<sup>1</sup> The court reporter at the July 7, 2022 oral argument of petitioners'/plaintiffs' July 6, 2022 order to show cause for a TRO/preliminary injunction ([#66](#)) utilized this same incorrect caption in the transcription she e-mailed me on August 1, 2022. I corrected it by an August 16, 2022 e-mail to her, with a cc to the Court ([#90](#)). This August 16, 2022 e-mail and my transcript corrections ([#91](#)) – including to the caption (here enclosed) – are Exhibits B-2 and C to my September 15, 2022 "Affidavit in Opposition to Cross-Motion and in Support with Exhibits A-D" (##87-92), which [the Court lists as #9 among the "papers" it "read and considered" in rendering its November 23, 2022 decision.](#)

Supreme Court Justice Gandin

Page Two

November 25, 2022

beginning with the “papers” the decision purports were “read and considered”.

Although the NYSCEF record is *prima facie*, open-and-shut EVIDENCE of the Court’s calculated falsification of fact and law, mandating that it be prosecuted, removed from office, and put behind bars for public corruption, directly and irreparably injuring the People of the State of New York, **petitioners/plaintiffs hereby give notice to the Court to preserve the hard copy of our NYSCEF filings which we were required to furnish the Court pursuant to its [rules](#) – and which we did furnish to facilitate the Court’s discharging its duty to base its adjudications on the record before it.**

Please confirm that the hard copies of our NYSCEF filings will be preserved – and where – as otherwise we will take protective steps with respect thereto.

Finally, I have no record of response to my September 19, 2022 letter ([#95](#)) alerting the Court that its restriction on the length of affidavits and memoranda of law, by its rules, was unauthorized by [22 NYCRR §202.8-b of the Uniform Civil Rules for the Supreme Court & the County Court](#). As the Court did not change its rules in response to my letter, please advise as to whether you consulted with supervisory judicial authorities and who they were.

Thank you.

s/

ELENA RUTH SASSOWER,  
unrepresented individual petitioner/plaintiff

Enclosure

cc: AAG Gregory Rodriguez



STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ULSTER

~~Elena Ruth Sassower~~, Center for Judicial Accountability,  
Inc., Elena Ruth Sassower individually and as Director of  
the Center for Judicial Accountability, Inc., acting on  
their own behalf and on behalf of the People of the State  
of New York & the Public Interest,

Petitioners/Plaintiffs,

- against -

Index No. 904235-22

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

Respondents/Defendants. *Cetitia James in her official capacity as Attorney General of the State of New York*

ORDER TO SHOW CAUSE

HELD AT: ULSTER COUNTY COURTHOUSE  
285 Wall Street  
Kingston, New York 12401  
JULY 7, 2022

HELD BEFORE: HON. DAVID GANDIN

ELENA SASSOWER *unrepresented*  
~~Self-Represented~~ Litigant for the  
Petitioner/Plaintiff  
10 Stewart Place  
Apartment 2D E  
White Plains, New York 10603

NEW YORK STATE ATTORNEY GENERAL  
The Capitol  
Albany, New York 12224  
BY: Stacey Hamilton, ESQ.

BARBARA VAN BLARCUM  
Official Reporter  
Ulster County Courthouse  
Kingston, NY 12401  
Bvanblar@nycourts.gov

AG's Nov. 29, 2022 Notice of Entry [R.848]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

---

In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC., et al.,

Petitioners,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, LEGISLATIVE ETHICS  
COMMISSION, NEW YORK STATE INSPECTOR  
GENERAL, KATHY HOCHUL in her official capacity  
as GOVERNOR OF THE STATE OF NEW YORK,  
ANDREA STEWART-COUSINS in her official  
capacity as Temporary Senate President, NEW YORK  
STATE SENATE, et al.,

Respondents.

**NOTICE OF ENTRY**

Index No. 904235-22

Judge Gandin

PLEASE TAKE NOTICE that the within is a true copy of the Decision, Order and  
Judgment in this action entered in the Office of the County Clerk of Albany County on November  
23, 2022.

Dated: Albany, New York  
November 29, 2022

LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Respondents Thomas P. DiNapoli  
The Capitol  
Albany, New York 12224

By: /s/ *Gregory J. Rodriguez*  
Gregory J. Rodriguez  
Assistant Attorney General, of Counsel

TO: Elena Ruth Sassower  
10 Stewart Place, Apt. 2D-E  
White Plains, New York 10603



Petitioners' Dec. 16, 2022 Notice of Motion for Reargument, Vacatur, Transfer/Removal/Certification [R.849-851]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

Petitioners/Plaintiffs,

**December 16, 2022**

**Notice of Motion  
for Reargument, Vacatur,  
Transfer/Removal/Certification**

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
S I R S :

PLEASE TAKE NOTICE that upon the December 16, 2022 affidavit of the unrepresented individual petitioner Elena Ruth Sassower, the “legal autopsy”/analysis that is its Exhibit 1, and upon all papers and proceedings heretofore had, a motion will be made at Ulster County Supreme

Petitioners' Dec. 16, 2022 Notice of Motion for Reargument, Vacatur, Transfer/Removal/Certification [R.849-851]

Court, 285 Wall Street, Kingston, New York 12401, on Friday, January 6, 2023, at 1:00 p.m., for an order:

1. pursuant to CPLR §2221(d), granting reargument of the Court's November 23, 2022 "DECISION, ORDER and JUDGMENT" and, upon the granting of same, vacating it; and/or
2. pursuant to CPLR §5015(a)(4), vacating the November 23, 2022 "DECISION, ORDER and JUDGMENT" for "lack of jurisdiction" by reason of the Court's interest, as to which Judiciary Law §14 divests it of jurisdiction; and/or,
3. pursuant to CPLR §5015(a)(3), vacating the November 23, 2022 "DECISION, ORDER and JUDGMENT" for "fraud, misrepresentation, or other misconduct of an adverse party" – this being, in the first instance, respondent Attorney General Letitia James, representing herself and her fellow respondents; and
4. upon vacating the "DECISION, ORDER and JUDGMENT", granting the relevant "other and further relief" specified by petitioners' September 15, 2022 notice of motion ([#93](#)), previously embodied in the order to show cause that this Court signed on July 7, 2022 ([#75](#)) and, prior thereto, by the June 23, 2022 notice of petition ([#46](#)), for an order:

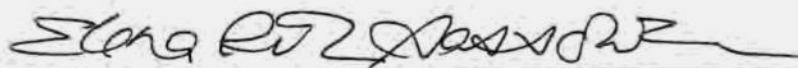
"transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of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

5. granting such other and further relief as may be just and proper, including \$100 motion costs pursuant to CPLR §8202.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR §2214(b), answering papers, if any, are to be served on petitioners seven days before the return date, *to wit*, Friday, December 30, 2022.

Petitioners' Dec. 16, 2022 Notice of Motion for Reargument, Vacatur, Transfer/Removal/Certification [R.849-851]

Dated: White Plains, New York  
December 16, 2022



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

10 Stewart Place, Apartment 2D-E  
White Plains, New York 10603  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)

TO: Attorney General Letitia James  
The Capitol  
Albany, New York 12224-0341

ATT: Assistant Attorney General Gregory Rodriguez

Petitioners' Dec. 16, 2022 Moving Affidavit for Reargument, Transfer/Removal/Certification [R.852-855]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

Petitioners/Plaintiffs,

**December 16, 2022**

**Moving Affidavit  
for Reargument, Vacatur,  
Transfer/Removal/Certification**

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
STATE OF NEW YORK                    )  
COUNTY OF WESTCHESTER        ) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual petitioner, fully familiar with all the facts, papers,  
and proceedings heretofore had and submit this affidavit in support of the relief sought by  
petitioners' accompanying notice of motion (#119).

Petitioners' Dec. 16, 2022 Moving Affidavit for Reargument, Transfer/Removal/Certification [R.852-855]

2. By letter dated November 25, 2022 ([#117](#)), I alerted the Court that its November 23, 2022 “DECISION, ORDER, and JUDGMENT”, which it filed six times on the NYSCEF docket ([#111](#), [#112](#), [#113](#), [#114](#), [#115](#), [#116](#)), was “indefensible, fraudulent, and jurisdictionally-void”, stating:

“Within the next month petitioners/plaintiffs will file a notice of appeal to the Appellate Division, Third Department and, thereafter, complaints against the Court with supervisory, ethics, and criminal authorities, particularizing the Court’s obliteration of ALL cognizable standards by its decision, *readily verifiable* from the the most cursory comparison of the decision with the [NYSCEF](#) record, beginning with the ‘papers’ the decision purports were “read and considered”. (capitalization, italics and hyperlinking in the original).

3. It was not my intention to make any further motion to this Court. However, upon preparing petitioners’ notice of appeal and the informational statement that the Appellate Division, Third Department requires to accompany it, I realized that even were petitioners to perfect the appeal fairly immediately, it would still take many months for the appeal to be fully submitted, calendared for argument, argued, and decided – and that the best way to mitigate the irreparable injury that the Court has caused to constitutional, lawful state governance and the People of the State of New York since being assigned the case on or about June 30, 2022 was for the Court to vacate the “DECISION, ORDER and JUDGMENT”, upon submission of a formal motion. This, then, is that formal motion.

4. Pursuant to CPLR §2221(d), a motion for reargument may be made where a court has “overlooked or misapprehended” “matters of fact or law” “in determining a prior motion”. At bar, this Court has “overlooked [and] misapprehended” ALL “fact [and] law” in determining and not determining the motions that were before it – and proving this, resoundingly, is my 31-page, single-spaced “legal autopsy”/analysis of the Court’s “DECISION, ORDER and JUDGMENT”, herewith furnished as Exhibit 1 ([#121](#)).

Petitioners' Dec. 16, 2022 Moving Affidavit for Reargument, Transfer/Removal/Certification [R.852-855]

5. Such “legal autopsy/analysis”, to whose accuracy I swear under penalties of perjury, is dispositive of petitioners’ entitlement to the granting of reargument and, upon such granting, to vacatur of the Court’s “DECISION, ORDER and JUDGMENT”.

6. Likewise, the “legal autopsy”/analysis is dispositive of petitioners’ entitlement to the granting of a vacatur motion pursuant to CPLR §5015(a):

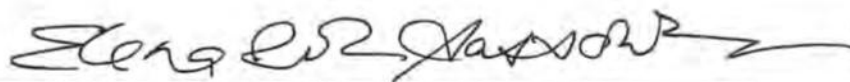
- subdivision (4), for “lack of jurisdiction” – as the Court was divested of jurisdiction based on Judiciary Law §14, by reason of its interest; and
- subdivision (3) for “fraud, misrepresentation, or other misconduct of an adverse party” – the “adverse party” being the respondents, starting with respondent Attorney General Letitia James, a respondent representing herself and her fellow respondents.

7. Upon such mandated vacatur, whether by CPLR §2221(d), CPLR §5015(a)(4), and/or CPLR §5015(a)(3), this Court’s ministerial duty is to grant the relevant “other and further relief” specified by petitioners’ September 15, 2022 notice of motion ([#93](#)), which I had previously embodied in my order to show cause that this Court signed on July 7, 2022 ([#75](#)) and, prior thereto, in my June 23, 2022 notice of petition ([#46](#)), for an order:

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

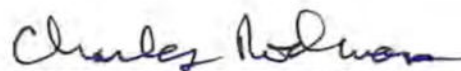
Petitioners' Dec. 16, 2022 Moving Affidavit for Reargument, Transfer/Removal/Certification [R.852-855]

8. Obviously, the Court's granting of the aforesaid relief mandated by this motion will moot the notice of appeal to the Appellate Division, Third Department that petitioners are also filing on this day – the 78<sup>th</sup> anniversary of the start of the Battle of the Bulge – as their two-front response to the Court's assault by its "DECISION, ORDER and JUDGMENT" on the ten causes of action of their June 6, 2022 D-Day-plus-78-years verified petition (#1).



ELENA RUTH SASSOWER

Sworn to before me this  
16<sup>th</sup> day of December 2022



Notary Public

CHARLES B. RODMAN  
Notary Public, State of New York  
No. 4620311  
Qualified in Westchester County  
Commission Expires 12/31/2025

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

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

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

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

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

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

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

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

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



Ex. 1 to Petitioners' Dec. 16, 2022 Affidavit: "Legal Autopsy"/Analysis of Nov. 23, 2022 Decision [R.856-886]

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

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

“‘[A] plaintiff’s cause of action is valuable property within the generally accepted sense of that word, and, as such, it is entitled to the protections of the Constitution.’,

*Link v. Wabash Railroad Co.*, 370 U.S. 626, 646 (1962),  
U.S. Supreme Court Justice Hugo Black writing in dissent,  
with Chief Justice Earl Warren concurring”,

petitioners stated:

“In this major lawsuit, with ten causes of action exposing the corruption of New York’s public protection/ethics entities, enabling and abetting the corruption of New York state governance involving an ‘off the constitutional rails’ state budget and massive larceny of taxpayer monies, including by pay raises to New York’s state judicial, executive, and legislative constitutional officers based on ‘false instrument’ reports, Respondent Attorney General Letitia James, a pay raise beneficiary, is representing herself and her nine co-respondents. Appearing for her, ‘of Counsel’, is Assistant Attorney General Gregory Rodriguez, whose August 18, 2022 cross-motion (##79-82) to dismiss the June 6, 2022 verified petition is not just frivolous, but a ‘fraud on the court’,<sup>fn</sup> fashioned, from beginning to end, on knowingly false and misleading factual assertions, material omissions,<sup>fn</sup> and on law that is inapplicable, misstated, or both.

Such litigation fraud repeats AAG Rodriguez’ comparable litigation fraud by his June 27, 2022 motion to dismiss the petition (##50-58), already demonstrated by petitioners’ June 28, 2022 opposing affidavit (##61-64). It additionally follows upon the fraudulent advocacy of his colleague, Assistant Attorney General Stacey Hamilton, at the July 7, 2022 oral argument on petitioners’ order to show cause for a TRO/preliminary injunction (##66-72), of which AAG Rodriguez was furnished notice and the transcript proof.<sup>fn</sup> That the Court permitted this prior litigation fraud, indeed rewarded it, has plainly emboldened Attorney General James and her subordinates to do the same a third time, secure in the belief that the Court, being a pay raise beneficiary itself, will allow them to get away with everything.”

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

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

Ex. 1 to Petitioners' Dec. 16, 2022 Affidavit: "Legal Autopsy"/Analysis of Nov. 23, 2022 Decision [R.856-886]

2. pursuant to Judiciary Law §487(1), making such determination as would afford petitioners treble damages in a civil action against Respondent Attorney General James, her culpable attorney staff, and culpable respondents based on their August 18, 2022 dismissal cross-motion, June 27, 2022 dismissal motion, and, additionally, the fraud committed, on their behalf, by Assistant Attorney General Stacey Hamilton by her July 7, 2022 oral argument in opposition to petitioners' order to show cause for a TRO/preliminary injunction;
3. pursuant to 22 NYCRR §100.3D(2), referring Respondent Attorney General James, her culpable attorney staff, and culpable respondents to:
  - (a) appropriate disciplinary authorities for their knowing and deliberate violations of New York's Rules of Professional Conduct for Attorneys and, specifically, Rule 3.1 'Non-Meritorious Claims and Contentions'; Rule 3.3 'Conduct Before A Tribunal'; Rule 8.4 'Misconduct'; Rule 5.1 'Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers'; and Rule 5.2 'Responsibilities of a Subordinate Lawyer';
  - (b) appropriate criminal authorities for their Judiciary Law §487 'misdemeanor', and for their knowing and deliberate violations of penal laws, including, Penal Law §496 'corrupting the government'; Penal Law §195 'official misconduct'; Penal Law §175.35 'offering a false instrument for filing in the first degree'; Penal Law §195.20 'defrauding the government'; Penal Law §190.65: 'scheme to defraud in the first degree'; Penal Law §155.42 'grand larceny in the first degree'; Penal Law §105.15 'conspiracy in the second degree'; Penal Law §20 'criminal liability for conduct of another';
4. pursuant to Executive Law §63.1 and Rule 1.7 of the New York Rules of Professional Conduct proscribing conflicts of interest, disqualifying Respondent Attorney General James from representing her co-respondents and requiring appointment of independent, outside counsel to determine 'the interest of the state' pursuant to Executive Law §63.1 – and petitioners' entitlement to representation;
5. pursuant to CPLR §3211(c), granting summary judgment to petitioners on the ten causes of action of their June 6, 2022 verified petition/complaint and September 1, 2022 verified amendment thereto – starting with the sixth cause of action for a declaration that the 'ethics commission reform act of 2022' is unconstitutional, unlawful and void, as it was enacted in violation of mandatory provisions of the New York State Constitution, statutes, legislative rules, and caselaw;
6. pursuant to CPLR §2214(c), directing respondents to furnish the Court with the papers specified by petitioners' June 28, 2022 notice and September 3, 2022 notice – or, alternatively, pursuant to CPLR §3124, compelling respondents'

Ex. 1 to Petitioners' Dec. 16, 2022 Affidavit: "Legal Autopsy"/Analysis of Nov. 23, 2022 Decision [R.856-886]

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

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

- (a) disclosure by the Court, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner's July 6, 2022 affidavit in support of their order to show cause, and further manifested by the Court's oral decision at the July 7, 2022 argument of petitioners' order to show cause for a TRO/preliminary injunction;
- (b) transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and 'rule of necessity' cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals."

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

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

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

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

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

Ex. 1 to Petitioners' Dec. 16, 2022 Affidavit: "Legal Autopsy"/Analysis of Nov. 23, 2022 Decision [R.856-886]

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

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

“This memorandum of law is submitted in reply to respondent Attorney General James’ September 29, 2022 opposition to petitioners’ September 15, 2022 motion for sanctions, summary judgment, and other relief. Consisting of an opposing affirmation (#98) and opposing memorandum of law (#99) by Assistant Attorney General Gregory Rodriguez, appearing ‘of Counsel’, both his affirmation and memorandum rest on brazen fraud and deceptions – essentially the same as fill his September 29, 2022 reply affirmation (#101) and reply memorandum of law (#102) to petitioners’ September 15, 2022 opposition to his August 18, 2022 cross-motion to dismiss the verified petition.

The overarching fraud is that petitioners’ September 15, 2022 motion is conclusory and unsupported – and that respondents’ August 18, 2022 cross-motion is un rebutted. This, AAG Rodriguez accomplishes by concealing, *in toto*, the content of petitioners’ analysis of the August 18, 2022 cross-motion. The analysis is Exhibit A (#88) to petitioners’ September 15, 2022 affidavit (#87) in opposition to the cross-motion (#79) and in support their motion (#93).

Because essentially ALL seven branches of petitioners’ September 15, 2022 motion rest on the analysis, it is specified by their notice of motion from among the exhibits to their September 15, 2022 affidavit.

The state of the record with respect to the analysis – and with respect to the September 15, 2022 affidavit of which it is part and petitioners’ September 15, 2022 memorandum of law based thereon (#94) – mandates the granting of all the relief the notice of motion seeks.

No fair and impartial tribunal could hold otherwise, let alone in a case of such magnitude and significance to ‘the People of the State of New York & the Public Interest’, on whose behalf petitioners expressly act.

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

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

Ex. 1 to Petitioners' Dec. 16, 2022 Affidavit: "Legal Autopsy"/Analysis of Nov. 23, 2022 Decision [R.856-886]

‘Point VI

PETITIONERS’ SUBMISSION ENTITLED ‘ANALYSIS  
OF THE AUGUST 18, 2022 CROSS-MOTION OF RESPONDENT  
ATTORNEY GENERAL LETITIA JAMES’ SHOULD BE STRICKEN

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

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

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

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

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

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

Ex. 1 to Petitioners' Dec. 16, 2022 Affidavit: "Legal Autopsy"/Analysis of Nov. 23, 2022 Decision [R.856-886]

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

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

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

ORDERED that petitioners' cross-motion is denied."

\* \* \*

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

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\* \* \*

Ex. 1 to Petitioners' Dec. 16, 2022 Affidavit: "Legal Autopsy"/Analysis of Nov. 23, 2022 Decision [R.856-886]

**PAGE 1 – the caption**

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

“This is the same incorrect caption as the Court used for its only prior written decision, dated July 18, 2022, which it filed on July 20, 2022 ([#76](#)).

Each incorrect caption repeats my name, so that it appears twice – the first time as the lead petitioner/plaintiff, when I am the second, AFTER the Center for Judicial Accountability, Inc. – so-reflected by our initiating June 6, 2022 petition/complaint ([#1](#)) and all our subsequent filings<sup>fn</sup>.

The consequence is that should the decision be published, it will appear with the incorrect shortened case caption, *Sassower, et al. v. JCOPE, et al.*, rather than *Center for Judicial Accountability, Inc., et al. v. JCOPE, et al.*

Please correct same so that this does not happen.” (hyperlinking, capitalization, and italics in the original).

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

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

**PAGE 1 – “The following papers were read and considered on this special proceeding”**

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

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



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

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

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

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

It seems reasonable to surmise that the decision’s recasting of AAG Rodriguez’ cross-motion as a motion is connected with its omitting of the order to show cause from its “papers...read and considered”.<sup>4</sup>

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

*summary of petition & course of the proceedings*

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

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

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

This paragraph is materially false and misleading:

- It here conceals, as the decision does throughout, that this “hybrid” lawsuit is also a citizen-taxpayer action — replicating, even more dramatically, the deceit of AAG Rodriguez’ cross-motion, which had confined itself to obscuring that the “hybrid” includes a citizen taxpayer action. As pointed out by petitioners’ Exhibit A “legal autopsy”/analysis ([#88](#), pp. 7, 12, 14-15), the two-fold reason for AAG Rodriguez doing this was because the citizen-taxpayer action statute contemplates the Attorney General as plaintiff or acting on behalf of a plaintiff and, further, because it confers standing to petitioners;
- It incorrectly states that petitioners seek prohibition – replicating the same from AAG Rodriguez’ cross-motion, the erroneousess of which petitioners’ Exhibit A “legal autopsy”/analysis had pointed out ([#88](#), p. 19);
- It here conceals, as the decision does throughout, that petitioners expanded their requested Article 78 mandamus pertaining to their complaints to encompass the further Article 78 provision (CPLR §7803(3)) as to whether JCOPE’s and the Inspector General’s handling of their complaints “was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion” – an expansion made by their September 1, 2022 verified amendment to their petition ([#84](#)), the same as the decision lists as “2. Verified Amendment to June 6, 2022 Petition”;
- It here conceals, as the decision does throughout, that petitioners’ challenge to the constitutionality of ECRA pertains to its enactment through the budget;
- It here conceals, as the decision does throughout, that petitioners’ challenge to the FY 2022-2023 state budget and its bills includes their violations of mandatory statutory and legislative rule provisions, controlling caselaw, and fraud;
- It falsely implies that petitioners are only challenging appropriations for the Judiciary in the Legislative/Judiciary budget bill, when, in fact, their challenges to legislative appropriations are more focal and include those for respondent Legislative Ethics Commission – so-  
reflected by their April 13, 2022 complaint to JCOPE ([#2](#)) and their eighth cause of action based thereon ([#1](#), at ¶¶91-96);

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- It is false and misleading by its two sentences:

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

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

**PAGE 2 – first full paragraph**

*summary of the petition*

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

This paragraph is materially false and misleading:

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- Petitioners' "various complaints" to JCOPE were seven complaints, all annexed to the petition ([#2](#), [#8](#), [#9](#), [#10](#), [#13](#), [#14](#), [#15](#)), and their basis was not unspecified "breaches of the public trust", but violations of Public Officers Law §74 pertaining to conflicts of interest by public officers and employees within JCOPE's jurisdiction.
- The "most recently" filed of petitioners' complaints was not "on or about" April 13, 2022, but on April 13, 2022 ([#2](#)) – and its particulars were presented by the prefatory "Factual Allegations" section of the petition ([#1](#), ¶¶16-26).
- The April 13, 2022 complaint was not confined to a "claim" that the FY2022-23 state budget and legislative/judiciary budget bills were "unconstitutional", as if the petition did not also claim that they violated statutes and legislative rules, were larcenous, and the product of fraud – and that propelling same were conflicts of interest proscribed Public Officers Law §74.
- It conceals that ECRA's enactment was part of the FY2022-2023 state budget – and that such was the basis for petitioners' challenge to it by their sixth cause of action ([#1](#), ¶¶78-85);
- It misstates the "rationale" as to how ECRA would insulate "high-ranking public figures in state government...from public corruption investigations". The petition did not "maintain that the jurisdiction conferred by ECRA to CELG is less than that of JCOPE and thus CELG will not be able to adequately investigate complaints of public corruption". Rather, the petition asserted that ECRA eliminated from the JCOPE statute salutary mandatory provisions enforceable by Article 78/mandamus pertaining to complaints, *to wit*, of Executive Law §94.13(a) and Executive Law §94.9(1)(i) ([#1](#), ¶¶ 6, 17).

**PAGE 2 – second full paragraph**

*summary of petition's first cause of action*

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

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

- It conceals petitioners' amendment to their first cause of action ([#84](#)), expanding it beyond mandamus to include whether JCOPE's handling of their complaints and failure to issue 15-day letters "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion".
- It falsely implies, by its last sentence, that petitioners contended that JCOPE's failure to send out 15 day letters for their complaints "impaired its ability to properly investigate" – when petitioners never contended that JCOPE investigated their complaints, period;
- It falsely purports that petitioners contend that because JCOPE failed to issue 15 day letters "the 2022-2023 state budget and the legislative and judiciary budget bill [are] unconstitutional" – which they did not and would not as it is bizarre nonsense.

**PAGE 2 – third full paragraph**

*summary of respondents' dismissal "motion"*

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

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

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

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

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

*no basis for judicial disqualification*

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

This paragraph is utterly false and misleading:

- Petitioners did not seek Justice Gandin’s recusal, but, rather, by the seventh branch of their September 15, 2022 motion for “other and further relief” sought disclosure germane to that issue ([#93](#)) – also doing the same by the “other and further relief” third branch of their “July 7, 2022 application for a temporary restraining order”, this being their order to show cause for a TRO/preliminary injunction ([#75](#)), which the decision omits from its page 1 listing of “papers...read and considered”;
- Justice Gandin’s actual bias was already demonstrated PRIOR to petitioners’ “July 7, 2022 application for a temporary restraining order” – and so reflected by the seventh branch of their September 15, 2022 motion, identifying the particulars as having been set forth by their July 6, 2022 affidavit in support of their order to show cause for a TRO/preliminary injunction ([#67](#)), which Justice Gandin has not confronted;
- It conceals all the facts particularized by petitioners’ September 15, 2022 affidavit in support of the seventh branch of their motion as to Justice Gandin’s actual bias at the July 7, 2022



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

- It conceals all the law and legal argument particularized by petitioners' September 15, 2022 memorandum of law pertaining to the seventh branch of their motion ([#94](#), pp. 14-17) – below quoted, in full, with its footnotes;
- It falsely states that petitioners had claimed that Justice Gandin's "interest in the outcome of this proceeding" was because "the state budget has provisions governing judicial compensation", when it is because the complaints to JCOPE and the Inspector General that are the subject of the first and fifth causes of action all involve the commission-based 'force of law' judicial pay raises that have unlawfully and by-fraud boosted Justice Gandin's salary by approximately \$80,000 per year, the Judiciary's own budget, and the New York State Commission on Judicial Conduct;
- It conceals that "rule of necessity", which Justice Gandin impliedly invokes to dispose of his "legal disqualification under Judiciary Law §14", cannot be invoked because it requires jurisdiction, which Judiciary Law §14 divests from him;
- It LIES that Justice Gandin "can fairly and impartially adjudicate [this proceeding] on its merits", when his decision making this declaration obliterates ALL standards and falsifies the record, further establishing his actual bias, arising from his interest;
- It conceals that the cited "[Ctr for Judicial Accountability, Inc. v. Cuomo](#), 167 AD3d 1406, 1408 (3d Dept 2018)" is a judicial fraud, so-demonstrated by the EVIDENCE in the record – summarized by petitioners' October 4, 2022 reply memorandum of law ([#110](#), at pp. 5-6) – the last "paper...read and considered" listed by the decision's page 1. Its record citations were as follows:
  - [page 22 of the \[Exhibit A 'legal autopsy'/analysis \(#88\)\]](#), furnishing, by hyperlinks, the proof that the Third Department appellate decision in *CJA v. Cuomo...DiFiore* is fraudulent – the same as identified and furnished by ¶87(8) of the petition, *to wit*, [petitioners' analysis of the decision](#) which they presented to the Court of Appeals by their [March 26, 2019 letter in support of an appeal of right](#), whose accuracy was [uncontested](#);
  - [Exhibit D-3 to the petition \(#12\)](#), which is petitioners' February 7, 2021 judicial misconduct complaint against the Court of Appeals judges and Third Department justices pertaining to the fraudulent *CJA v. Cuomo...DiFiore* appellate decision, which, together with petitioners' February 11, 2021 attorney misconduct complaint against AG James for her litigation fraud at the Court of Appeals in obstructing review of that decision ([Exhibit D-2 \(#11\)](#)), is part of their March 5, 2021 complaint against her to JCOPE ([Exhibit D-1 \(#10\)](#))".

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

"Petitioners' Seventh Branch of Relief

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

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

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

'14. The Court's duty, in response to this order to show cause, is to furnish such other explanation as it has – and, in any event, to make disclosure, pursuant to [§100.3F of the Chief Administrator's Rules Governing Judicial Conduct](#), of its financial and other interests.

15. Disclosure is especially requisite if the Court refuses to disqualify itself, based on the appearance and actuality of its interest and bias, refuses to confront its lack of jurisdiction arising from interest proscribed by [Judiciary Law §14](#), and refuses to address the additional threshold relief sought, with disclosure, by this order to show cause's branch of 'other and further relief as may be just and proper'...

16. Suffice to say that notwithstanding the Court's absence of jurisdiction, by reason of its proscribed Judiciary Law §14 interest, its *matter of law* granting of TRO/preliminary injunctive relief is a ministerial act – a 'housekeeping' task, preserving the *status quo*, comparable to the Court's ability to make an order transferring/removing the case to federal court, or certifying the question to the Appellate Division, Third Department or the New York Court of Appeals, both sought by the June 23<sup>rd</sup> notice of petition, as here on this order to show cause." (hyperlinking in the original).



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[Judiciary Law §14](#) entitled ‘Disqualification of judge by reason of interest or consanguinity’ reads, in pertinent part:

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

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

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

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<sup>fn5</sup> See Appellate Division, Third Department’s decision in *People v. Alteri*, [47 A.D.3d 1070 \(2008\)](#), stating:

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

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

‘Section 14 of the Judiciary Law... is the sole statutory authority in New

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‘rule of necessity’ cannot be invoked, because such is predicated on jurisdiction that Judiciary §14 divests from interested judges.<sup>fn6</sup>

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

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

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

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

<sup>fn6</sup> See 32 New York Jurisprudence §45 (1963), ‘Disqualification as yielding to necessity’:

‘...since the courts have declared that the disqualification of a judge for any of the statutory reasons deprives him of jurisdiction,<sup>fn</sup> a serious doubt exists as to the applicability of the necessity rule where the judge is disqualified under the statute.<sup>fn</sup>’

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

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

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

*'A single decision or judicial action, correct or not, which is established to have been based on improper motives and not upon a desire to do justice or to properly perform the duties of his office, will justify a removal...'*, italics added by Appellate Division, First Department in *Matter of Capshaw*, 258 AD 470, 485 (1940), quoting from *Matter of Droege*, 129 AD 866 (1<sup>st</sup> Dept. 1909).

*'A judicial officer may not be removed for merely making an erroneous decision or ruling, but he may be removed for willfully making a wrong decision or an erroneous ruling, or for a reckless exercise of his judicial functions without regard to the rights of litigants, or for manifesting friendship or favoritism toward one party or his attorney to the prejudice of another...'* *Matter of Bolte*, 97 AD 551, 568 (1<sup>st</sup> Dept. 1904).

*'...Favoritism in the performance of judicial duties constitutes corruption as disastrous in its consequence as if the judicial officer received and was moved by a bribe.'* (at 574)." (petitioners' September 15, 2022 memorandum of law ([#94](#)), pp. 14-17, bold, underlining, hyperlinking in the original).

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

"THE RECORD WITH RESPECT TO  
THE SEVENTH BRANCH OF PETITIONERS' MOTION<sup>fn8</sup>

*Disclosure by the Court of its Interests, Giving Rise to its Manifested Actual Bias*

AAG Rodriguez' opposition to the seventh branch of petitioners' motion is at Point IV of his opposing memorandum of law ([#99](#), at pp. 4-5) titled: 'Petitioners Do Not Identify Any Valid Ground to Disqualify Judge Gandin from Adjudicating this Litigation'<sup>fn9</sup> and at ¶12 of his opposing affirmation ([#98](#)). His opposition is founded

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

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

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

- (a) disclosure by the Court, pursuant to §100.3F of the Chief Administrator's Rules Governing Judicial Conduct, of its financial and other interests in this case, giving rise to its actual bias, as recited by petitioner's July 6, 2022 affidavit in support of their order to show cause, and further manifested by the Court's oral decision at the July 7, 2022 argument of petitioners' order to show cause for a TRO/preliminary injunction;
- (b) transferring/removing this case to federal court, including pursuant to Article IV, §4 of the United States Constitution: 'The United States shall guarantee every State in this Union a Republican Form of Government', inasmuch as this Court and every justice and acting justice of the Supreme Court of the 62 counties of New York State are divested of jurisdiction to hear the case pursuant to Judiciary Law §14 because of their direct financial and other interests and "rule of necessity" cannot be invoked by reason thereof – or, alternatively, certifying the question to the Appellate Division, Third Department or to the New York Court of Appeals.

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

**PAGE 3 – first full paragraph**

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

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

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

**PAGE 3 – second full paragraph**

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

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

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

“AAG Rodriguez here conceals that petitioners are expressly acting ‘on behalf of the People of the State of New York and the public interest’ and that they have raised, as a threshold issue, their entitlement to the Attorney General's representation, pursuant to Executive Law §63.1, because they – not respondents – are upholding the ‘interest of the state’ – and that this is proven by the Attorney General's litigation fraud, in the absence of any legitimate defense.

It may also be presumed that the reason AAG Rodriguez conceals, at his page 1, that this ‘hybrid’ lawsuit is also a citizen-taxpayer action is because State Finance Law Article 7-A expressly contemplates that the Attorney General will involve himself as plaintiff or on behalf of plaintiffs to ensure merits determination of wrongful, illegal and unconstitutional expenditures of taxpayer monies (State Finance Law §123-A, §123-C, §123-D, §123-E).<sup>fn</sup>

As ‘any claims alleged in the Petition on behalf of Petitioner CJA’ are also alleged by petitioner Sassower, they continue through her, making dismissal of CJA's claims ‘of little practical consequence’. *Cf., Cass v. New York*, 88 AD2d 305, 308 (3<sup>rd</sup> Dept. 1982), dismissal of action against the state as being ‘a result of little practical consequence since the two State officers [Comptroller and Chief Administrator of the Courts] remain as parties defendants.’” (underlining in the original).

**PAGE 3 – last paragraph**

*dismissal of First Cause of Action ([#1](#), ¶¶27-41)  
& Third Cause of Action (¶¶48-53) for “lack of standing”*

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

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

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

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



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

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

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

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

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

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

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

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

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

#### **PAGE 4 – first paragraph**

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

"Sassower's second cause of action seeking mandamus to compel JCOPE to file an annual report pursuant to the former EL §94(9)(1)(i) detailing complaints received as well as their disposition has been rendered moot by the enactment of ECRA on July 8, 2022. By Sassower's own admission, ECRA abolished JCOPE and in its place established CELG. As JCOPE no longer exists, it cannot be compelled to file an annual report. Similarly, Sassower's fourth cause of action in the nature of mandamus to compel the LEC to issue annual reports for the years 2020 and 2021 is moot as the reports have been published on the organization's official website. As further judicial determination of these issues will not affect the rights of the parties, the claims are dismissed. See *Sportsmen's Tavern LLC v. New York State Liq. Auth.*, 194 AD3d 1557 (4<sup>th</sup> Dept 2021)."

This paragraph is also fraudulent:

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



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

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

#### **PAGE 4 – second paragraph**

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

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

This paragraph is another fraud.

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- It misrepresents the mandamus sought, which, as reflected by the very title of the fifth cause of action, is not limited to EL §53(1), but “the Mandates of Executive Law Article 4-A and [the Inspector General’s] own Policy and Procedure Manual”;
- It conceals that the fifth cause of action additionally seeks a declaration that “the Provisions of the Policy and Procedural Manual that Allows the Inspector General to Take ‘No Action’ on Complaints Involving ‘Covered Agencies’ to be Violative of Executive Law §53.1 and Void” – also reflected by the title of the fifth cause of action;
- It conceals that petitioners further expanded their fifth cause of action by their amendment to the petition, including by an expansion of the title, to add:

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

- Its simplistic assertion that the “shall” language of EL §53(1) is “discretionary” and, therefore, not enforceable by mandamus is unsupported by ANY examination of “the legislative intent gathered from the entire act and the surrounding circumstances”, which it quotes as necessary for such determination;
- It falsely implies that petitioners’ November 2, 2021 complaint is “patently devoid of merit...on [its] face” and involves but “allegations of public corruption in state government”, when the complaint ([#17](#)) presents EVIDENCE that is *prima facie*, and open-and-shut of the Inspector General’s own corruption and that of key state entities within its jurisdiction.

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

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

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

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

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

- It conceals that petitioners' constitutional challenge to ECRA pertains to its enactment through the budget, except possibly inferentially;
- It is a LIE that petitioners challenge by "only conclusory, unsupported allegations..." the constitutionality of the budget – and Justice Gandin does not cite to any paragraph of their sixth, seventh, eighth and ninth causes of action, or furnish any example, of what he contends to be "conclusory" or "unsupported" – or as deficient because it does not specify the names of "members of the legislature [who] violated various provisions of the state constitution";
- It is a LIE that petitioners challenge the "constitutionality of 'three people in the room' budget negotiations" – and Judge Gandin does not cite to any paragraph of their sixth, seventh, eighth, and ninth causes of action for his assertion that they are;
- It is a LIE to cite to the Appellate Division, Third Department decision "*Ctr. for Jud. Accountability, Inc., supra*." as upholding the constitutionality of "'three person in a room'

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

- It is a LIE to cite to the Appellate Division, First Department decision “*Urban Justice Ctr. v. Pataki*, 38 AD3d 20, 30” (2006), as the plaintiffs in that case were challenging legislative rules, whereas here petitioners seek enforcement of legislative rules that respondents Senate and Assembly have violated;
- It is a LIE to cite to the Court of Appeals decision “*Saxton v. Carey*, 44 NY2d 545, 549 (1978), as the plaintiffs in that case were challenging the lack of itemization in the budget, which petitioners here do not challenge.

**PAGE 5 – first full paragraph**

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

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

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

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

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

- It is a LIE that petitioners “fail[ed] to allege non-speculative facts legally sufficient to overcome the strong presumption of constitutionality of the statute”. There is NO “presumption of constitutionality” when a statute’s unconstitutionality is facial – and such constitutes “non-speculative facts”;
- It is a LIE that “Sassower’s ‘as-applied’ challenge to the statute fails as the petition lacks an analysis of facts specific to her particular claims to determine whether the application of a statute deprived her of a protected right.” The tenth cause of action, by its ¶¶107, 109, furnishes facts specific and sufficient to her “‘as-applied’ challenge”.

### **PAGE 5 – ordering paragraphs**

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

ORDERED that petitioners’ cross-motion is denied.”

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

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

- Motion #4 is AAG Rodriguez’ August 18, 2022 cross-motion ([#79](#)).
- Motion #5 is petitioners’ September 15, 2022 motion ([#93](#)).
- Motion #2 is petitioners’ June 23, 2022 notice of petition ([#46](#)) and, additionally, their order to show cause ([#66](#)), signed by Justice Gandin on July 7, 2022 and signed again, as amended, on July 8, 2022 ([#75](#)) – as to which there is no ordering or dispositional paragraph in the decision.

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**PAGE 5 – final paragraph**

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

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

**PAGE 6 – only paragraph**

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

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



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL  
LITIGATION BUREAU

December 23, 2022

Hon. David Gandin  
Supreme Court Justice  
Ulster County Courthouse  
285 Wall Street  
Kingston, NY 12401

Re: *Center for Judicial Accountability, Inc. et al. v. New York State Commission on Public Ethics, et al.*; 904235-22 (Sup. Ct. Albany Cty.)

Dear Judge Gandin:

I write at this time on behalf of Respondents to request a two-week adjournment of the return date of Petitioner's motion for reargument, vacatur and transfer/removal/certification (NYSCEF 119) from January 6, 2023 to January 20, 2023, with answering papers due to be served on Petitioners by January 13, 2023. Petitioner Sassower has consented to this request.

Thank you for your attention to this matter.

Respectfully,

By: /s/ Gregory J. Rodriguez

Gregory J. Rodriguez  
Assistant Attorney General

(518) 776-2612

Gregory.Rodriguez@ag.ny.gov

cc: Elana Ruth Sassower (*via NYECF*)

AG's Jan. 13, 2023 Affirmation in Opposition to Reargument, etc. [R.888-891]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

Petitioners,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

NEW YORK STATE JOINT COMMISSION ON  
PUBLIC ETHICS, et al.,

Respondents.

**AFFIRMATION**

Index No. 904235-22

Gandin, J.

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Gregory J. Rodriguez, an attorney admitted to practice in the State of New York, affirms  
the following under penalty of perjury pursuant to CPLR 2106.

1. I am I am an Assistant Attorney General of counsel in this matter to  
Respondents/Defendants New York State Joint Commission on Public Ethics (“JCOPE”);  
Legislative Ethics Commission (“LEC”); New York State Office of the Inspector General; Kathy  
Hochul, in her official capacity as Governor of the State of New York; Andrea Stewart-Cousins,  
in her official capacity as Temporary Senate President; the New York State Senate; Carl Heastie,  
in his official capacity as Assembly Speaker; the New York State Assembly; Letitia James, in her  
official capacity as Attorney General of the State of New York; and Thomas DiNapoli, in his  
official capacity as Comptroller of the State of New York (hereafter collectively “Respondents”),  
in the above-captioned action.

2. I submit this affirmation in opposition to Plaintiffs/Petitioners’ (“Petitioners”)  
motion, brought by Notice of Motion on December 16, 2022 (NYSCEF No. 119), for an order



AG's Jan. 13, 2023 Affirmation in Opposition to Reargument, etc. [R.888-891]

granting re-argument of Respondents' motion to dismiss pursuant to CPLR 2221 and vacating the Court's Decision and Order dated November 23, 2002 pursuant to CPLR 5015.

3. A Petition was filed in this proceeding on June 6, 2022. NYSCEF No.1.

4. Thereafter, by Amended Order to Show Cause dated July 8, 2022, Petitioners sought a TRO and preliminary injunction. NYSCEF No. 75.

5. On August 18, 2022, Respondents opposed Petitioners' Motion for Preliminary Injunctive Relief and cross-moved to dismiss the Petition/Complaint. NYSCEF No. 79.

6. By Decision and Order dated November 23, 2022, the Court dismissed all causes of action. NYSCEF Nos. 111-116.

7. By Notice of Motion on December 16, 2022 (NYSCEF No. 119), Petitioners now seek an order granting re-argument of Respondents' motion to dismiss pursuant to CPLR 2221 and vacating the Court's Decision and Order dated November 23, 2002 pursuant to CPLR 5015.

8. For the reasons discussed in Respondents' accompanying memorandum of law, Petitioners' motion to reargue/vacate should be denied.

9. Namely, if the Court measures the Petitioners' motion against the standard for a motion to reargue, the Petitioners have not demonstrated that the Court misapprehended or overlooked the relevant facts and/or law as required under CPLR 2221(d). Instead, the Petitioners merely present the same arguments that the Court rejected in the underlying motions, which is insufficient for the Petitioners to carry their burden.

10. Petitioners also seek an order vacating the November 23, 2022 Decision and Order pursuant to CPLR 5015(a)(4) "for 'lack of jurisdiction' by reason of the Court's interest, as to which Judiciary Law § 14 divests it of jurisdiction." NYSCEF 119, p. 2; NYSCEF No. 121, p. 16. Petitioners further allege that the Court's decision and order constitutes a criminal act. *Id.*

AG's Jan. 13, 2023 Affirmation in Opposition to Reargument, etc. [R.888-891]

Petitioners' argument that the court lacked jurisdiction is premised solely on Petitioner's groundless claim for disqualification of Judge Gandin. Because there is no basis to disqualify Judge Gandin, the court had and has subject matter jurisdiction over this action.

11. Petitioners also seek an order vacating the Court's November 23, 2022 Decision and Order pursuant to CPLR 5015(a)(3) on the grounds of "fraud, misrepresentation, or other misconduct of an adverse party." NYSCEF 119, p. 2. Petitioners' motion is merely based on their continued conclusory allegations, without anything more, that Respondents' counsel engaged in "litigation fraud", "flagrant lie[s]" and "perjury". Therefore, Petitioners' motion to vacate should be denied.

12. Lastly, the document submitted by Petitioners entitled "Analysis of the November 23, 2022 Decision, Order and Judgment of Supreme Court Justice David M. Gandin" is a 31 page single-spaced document containing approximately 12,500 words. This document was not brought pursuant to any rule of the New York State Civil Practice Law and Rules and, therefore, should be stricken by the Court. Further, pursuant to 22 NYCRR § 202.8-b of the Uniform Civil Rules for the Supreme Court & County Court entitled "Length of Papers", affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each. Therefore, since Petitioners' submission is almost double that allowed under the uniform rules, it should be stricken.

WHEREFORE, the Respondents respectfully request that the court issue an order denying Petitioners' motion to reargue/vacate and granting the Respondents any further relief that the court deems, just, proper and equitable.

Dated: Albany, New York  
January 13, 2023

/s/ Gregory J. Rodriguez  
Gregory J. Rodriguez

AG's Jan. 13, 2023 Affirmation in Opposition to Reargument, etc. [R.888-891]

AG's Jan. 13, 2023 Memorandum in Opposition to Reargument, Etc. [R..892-900]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

---

In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR JUDICIAL  
ACCOUNTABILITY, INC.,

*Petitioners-Plaintiffs,*

904235-22

-against-

J. Gandin.

NEW YORK STATE JOINT COMMISSION ON PUBLIC  
ETHICS, et al.,

*Respondents-Defendants.*

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**MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' MOTION TO  
REARGUE AND VACATE**

LETITIA JAMES  
Attorney General of the State of New York  
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Date: January 13, 2023

## AG's Jan. 13, 2023 Memorandum in Opposition to Reargument, Etc. [R..892-900]

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**PRELIMINARY STATEMENT**

Respondents/Defendants New York State Joint Commission on Public Ethics (“JCOPE”); Legislative Ethics Commission (“LEC”); New York State Offices of the Inspector General; Kathy Hochul, in her official capacity as Governor of the State of New York; Andrea Stewart-Cousins, in her official capacity as Temporary Senate President; the New York State Senate; Carl Heastie, in his official capacity as Assembly Speaker; the New York State Assembly; Letitia James, in her official capacity as Attorney General of the State of New York; and Thomas DiNapoli, in his official capacity as Comptroller of the State of New York (hereafter collectively “Respondents”), by their attorney, Letitia James, Attorney General of the State of New York, respectfully submit this memorandum of law (i) in opposition to Plaintiffs/Petitioners’ (hereafter “Petitioners”) motion, brought by Notice of Motion December 16, 2022 (ECF No. 119), for an order granting re-argument of defendants’ motion to dismiss pursuant to CPLR 2221 and vacating the Court’s Decision and Order dated November 23, 2022 pursuant to CPLR 5015.

**PROCEDURAL HISTORY**

In this hybrid CPLR article 78 proceeding and declaratory judgment action, Petitioners requested that this Court take the extraordinary step of declaring as unconstitutional, unlawful and void (1) Part QQ of the Education, Labor Housing and Family Assistance Budget Bill #S.8006-C/A.9006-C - the “Ethics Commission Reform Act of 2022”; (2) the entire State Budget for fiscal year 2022-23; (3) Budget Bill S.8001-A/A.9001-A; (4) various appropriations from the 2022-23 state budget; and (5) Public Officers Law § 108.2(b). Petitioners also sought mandamus relief directing (1) JCOPE “to comply with Executive Law 94.13(a) and (b)” related to seven complaints filed by Petitioners; (2) JCOPE to issue Annual Reports for 2020 and 2021; (3) the New York State Inspector General to handle Petitioners’ complaint dated November 21, 2021;

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(4) the LEC to issue annual reports for 2020 and 2021, and (5) Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie to appoint a ninth member to the Legislative Ethics Commission. (See Petition, NYCEF No. 1).

Thereafter, by Amended Order to Show Cause dated July 8, 2022, Petitioners sought an order (1) granting Petitioners “a TRO pending a hearing on, and determination of, their entitlement to a preliminary injunction to stay” the Ethics Commission Reform Act of 2022 (“ECRA”); and (2) granting Petitioners “a preliminary injunction establishing their summary judgment entitlement to a declaration that . . . the ethics reform act of 2022 - was enacted in violation of mandatory provisions of the New York State constitution, statutes, legislative rules, and caselaw and must therefore be declared unconstitutional, unlawful, and void.”<sup>1</sup> NYCEF No.75.

On August 18, 2022, Defendants opposed Petitioners’ Motion for Preliminary Injunctive Relief and cross-moved to dismiss the Petition/Complaint. NYCEF No. 79. By Decision and Order dated November 23, 2022, the Court dismissed all causes of action. NYSCEF Nos. 111-116.

The court dismissed Center for Judicial Accountability, Inc. as a party because it is a corporation, and corporations are required by C.P.L.R. 321(a) to appear by an attorney. See *id.* at p.3.

The first cause of action (mandamus to compel JCOPE to issue 15-day letters under Executive Law § 94) and third cause of action (mandamus to compel the LEC to appoint a ninth member) were dismissed for lack of standing. *Id.*, at p. 4. The second cause of action (mandamus to compel JCOPE to issue annual reports) and the fourth cause of action (mandamus to compel

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<sup>1</sup> Petitioners’ applications for a TRO was previously denied. (NYSCEF Nos. 41, 75)

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LEC to issue annual reports) were dismissed as moot. *Id.* at p. 4. The fifth cause of action, seeking, in the nature of mandamus, to compel the Office of the Inspector General to investigate petitioners' allegations of public corruption in state government was dismissed, as devoid of merit. *Id.*, at p.4.

The sixth, seventh, eighth and ninth causes of action challenging the constitutionality of Ethics Commission Reform Act of 2022 ("ECRA"), the state budget, and the legislative and judicial budget bill were dismissed for failure to state a cause of action. *Id.* at p. 4. Similarly, the Tenth Cause of Action, seeking to invalidate POL § 108(2)(b), was dismissed for failure to state a cause of action. *Id.* at p. 4.

## **ARGUMENT**

### **POINT I**

#### **PETITIONERS FAIL TO SET FORTH GROUNDS TO REARGUE THEIR OPPOSITION TO DEFENDANTS' CROSS-MOTION TO DISMISS**

The requirements for a motion for leave to reargue a prior motion are set forth in CPLR 2221(d), which provides, in pertinent part, that such a motion "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion." See CPLR 2221(d)(2). Petitioners argue that the court "'overlooked [and] misapprehended' ALL 'fact [and] law', in determining and not determining the motions that were before it ..." and that the Court's Decision and Order dated November 22, 2022 is "indefensible, fraudulent, and jurisdictionally-void." See Petitioners' Moving Affidavit at ¶¶ 2, 4. (emphasis in the original).

In order to succeed on a motion to reargue, a party must demonstrate that the court "overlooked or misapprehended the facts and/or the law or mistakenly arrived at its earlier



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decision". *Weaver v. Weaver*, 198 A.D.3d 1140 (3<sup>rd</sup> Dept. 2021) (citing *Matter of Reed v Annucci*, 175 AD3d 1700, 1701, (3<sup>rd</sup> Dept. 2019). "While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented." *Matter of Carter v. Carter*, 81 AD3d 819, 820 (2d Dept 2011)(internal citations and quotations marks omitted).

If the Court measures the Petitioners' motion here against the standard for a motion to reargue, the Petitioners have not demonstrated that the Court misapprehended or overlooked the relevant facts and/or law. Instead, the Petitioners merely present the same arguments that the Court rejected in the underlying motions, which is insufficient for the Petitioners to carry their burden. Namely, throughout their motion to reargue, and as they did in their petition and motion papers, Petitioners allege "fraud, misrepresentation, or other misconduct of an adverse party". They also direct numerous attacks towards the Court by, among other things, continually characterizing the Court's decision, or portions thereof, as "false and misleading," "fraudulent," "based on flagrant concealment and falsification of the petition's allegations and controlling law" and based on "lies" and "fashioned on false and conclusory assertions." These baseless and continued allegations of fraud directed at the Court and Respondents are insufficient to support a motion to reargue.

For the reasons set forth above, the Petitioners have failed to carry their burden on the current motion, and the Court should deny the Petitioners' motion in its entirety, together with such other and further relief as the Court deems proper and necessary.

AG's Jan. 13, 2023 Memorandum in Opposition to Reargument, Etc. [R..892-900]

**POINT II****PETITIONERS FAIL TO ESTABLISH ANY BASIS TO VACATE THE COURT'S NOVEMBER 23, 2022 DECISION AND ORDER**

Petitioners seek an order vacating the November 23, 2022 decision and order pursuant to CPLR 5015(a)(4) “for ‘lack of jurisdiction’ by reason of the Court’s interest, as to which Judiciary Law § 14 divests it of jurisdiction.” NYSCEF 119, p. 2; NYSCEF No. 121, p. 16. Petitioners further allege that the Court’s decision and order constitutes a criminal act. *Id.* Petitioners’ argument that the court lacked jurisdiction is premised solely on plaintiff’s groundless claim for disqualification of Judge Gandin. As there is no basis to disqualify Judge Gandin, there is no predicate for Petitioners’ jurisdictional argument. On the contrary, the court had and has subject matter jurisdiction over this action. Petitioners reiterate their argument from their September 14, 2022 Notice of Motion that this case should be removed to federal court since this Court and every Justice and acting Justice of the Supreme Court in New York State is divested of jurisdiction pursuant to Judiciary Law § 14. For the reasons set forth in Respondents Memorandum of Law in Opposition to Petitioners’ Notice of Motion dated September 16, 2022 (NYSCEF No. 93) and in the Court’s November 22, 2022 Decision and Order, this claim should fail.

Petitioners also seek an order vacating the Court’s November 23, 2022 Decision and Order pursuant to CPLR 5015(a)(3) on the grounds of “fraud, misrepresentation, or other misconduct of an adverse party.”<sup>2</sup> NYSCEF 119, p. 2. Again, Petitioners’ motion is merely based

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<sup>2</sup> Petitioners also move to vacate based on their previous arguments that it is improper for the Attorney General to represent herself and her fellow respondents. NYSCEF 119, ¶ 3. For the reasons set forth in Respondents Memorandum of Law in Opposition to Petitioners’ Notice of Motion dated September 16, 2022 (NYSCEF No. 93), Petitioners’ request that Attorney General James should be disqualified should be denied.

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on their continued conclusory allegations, without anything more, that respondents' counsel engaged in "litigation fraud", "flagrant lie[s]" and "perjury." Therefore, Petitioners' motion to vacate should be denied.

### **POINT III**

#### **PETITIONERS' SUBMISSION ENTITLED "ANALYSIS OF THE NOVEMBER 23, 2022 'DECISION, ORDER AND JUDGMENT' OF SUPREME COURT JUSTICE DAVID M. GANDIN" SHOULD BE STRICKEN**

On December 12, 2022, Petitioners filed a Notice of Motion for Reargument, Vacatur, Transfer/Removal/Certification" (NYSCEF No. 119), a "Moving Affidavit for Reargument, Vacatur, Transfer/Removal/Certification" (NYSCEF No. 120) and a document entitled "Analysis of the November 23, 2022 'Decision, Order and Judgment' of Supreme Court Justice David M. Gandin." NYSCEF No. 121. The "Analysis of the November 23, 2022 'Decision, Order and Judgment' of Supreme Court Justice David M. Gandin." is a 31 page singled-spaced document that contains approximately 12,500 words. *Id.* First, this document was not brought pursuant to any provision of the New York State Civil Practice Law and Rules and, therefore, should be stricken by the Court on that basis. Second, 22 NYCRR § 202.8-b of the Uniform Civil Rules for the Supreme Court & County Court, entitled "Length of Papers" states that: "(a) Unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each." Therefore, since Petitioners' submission is almost double that allowed under the uniform rules, it should be stricken.

AG's Jan. 13, 2023 Memorandum in Opposition to Reargument, Etc. [R..892-900]

**CONCLUSION**

For the reasons set forth above, the relief requested in Petitioners' Motion to Reargue and Vacate should be denied, and Respondents should be granted any other relief deemed just and proper by the Court.

Dated: Albany, New York  
January 13, 2023

LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Respondents  
The Capitol  
Albany, New York 12224

By: s/ Gregory J. Rodriguez  
Gregory J. Rodriguez  
Assistant Attorney General, of Counsel  
Bar Roll No. 301842  
Telephone: (518) 776-2612  
Email: Gregory.Rodriguez@ag.ny.gov

TO: Petitioners Center for Judicial Accountability, Inc. and  
Elena Ruth Sassower (*via NYSCEF*)

Petitioners' Jan. 19, 2023 Reply Affidavit in Further Support of Dec. 16, 2022 Motion [R.901-907]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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

Index #: 904235-22

Petitioners/Plaintiffs,

**January 19, 2023**

**Petitioners' Reply Affidavit  
in Further Support of their  
December 16, 2022 Motion  
for Reargument, Vacatur,  
Transfer/Removal/Certification**

-against-

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

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

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

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

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

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

Respondents/Defendants.

-----X  
STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

Petitioners' Jan. 19, 2023 Reply Affidavit in Further Support of Dec. 16, 2022 Motion [R.901-907]

1. I am the unrepresented individual petitioner, fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in reply to the January 13, 2023 opposition of respondent Attorney General Letitia James, by her “of counsel” Assistant Attorney General Gregory Rodriguez, to petitioners’ December 16, 2022 motion for reargument, vacatur, transfer/removal/certification ([#119](#), [#120](#), [#121](#)) – and in further support of the motion.

2. AAG Rodriguez’ three-page opposing affirmation ([#126](#)) and barely seven-page opposing memorandum of law ([#127](#)) are completely fraudulent, beginning with their revised case captions. Culpable for this, in addition to AAG Rodriguez, are respondent Attorney General James directly and her supervisory staff. Indeed, on December 23, 2022, upon AAG Rodriguez e-mailing me to request a two-week adjournment, I responded:

“I have no objection, so long as you furnish the reargument/vacatur motion to your superiors – starting at the top with respondent Attorney General James – so that appropriate, if way belated, steps are taken consistent with professional and ethical responsibilities.”<sup>1</sup>

3. The duty of Attorney General James and her supervisory staff to have belatedly discharged “professional and ethical responsibilities” is established by the motion’s SOLE exhibit, its Exhibit 1 ([#121](#)). This is our 31-page, single-spaced “legal autopsy”/analysis of the Court’s November 23, 2022 “DECISION, ORDER and JUDGMENT”, identified by our December 16, 2022 moving affidavit as “dispositive” of our entitlement to the motion’s requested relief (underlining in the original).

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<sup>1</sup> The Court is aware of this e-mail exchange as it was part of my January 9, 2023 e-mail to the Court, inquiring as to the status of AAG Rodriguez’ December 23<sup>rd</sup> letter ([#124](#)), requesting its granting of the consented-to two-week adjournment (Exhibit 2). I received no response from the Court or from AAG Rodriguez – and the Court did not subsequently upload a so-ordering of AAG Rodriguez’ December 23<sup>rd</sup> letter. AAG Rodriguez plainly proceeded on the assumption that the requested adjournment to January 20, 2023 was granted.

Petitioners' Jan. 19, 2023 Reply Affidavit in Further Support of Dec. 16, 2022 Motion [R.901-907]

4. It is without contesting the accuracy of this “legal autopsy”/analysis in ANY respect, nor denying its “dispositive” significance, that AAG Rodriguez has interposed his opposition papers whose ONLY references to the “legal autopsy”/analysis are:

- in the last paragraph of his affirmation, stating:

“12. Lastly, the document submitted by Petitioners entitled ‘Analysis of the November 23, 2022 Decision, Order and Judgment of Supreme Court Justice David M. Gandin’ is a 31 page single-spaced document containing approximately 12,500 words. This document was not brought pursuant to any rule of the New York State Civil Practice Law and Rules and, therefore, should be stricken by the Court. Further, pursuant to 22 NYCRR § 202.8-b of the Uniform Civil Rules for the Supreme Court & County Court entitled ‘Length of Papers’, affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each. Therefore, since Petitioners’ submission is almost double that allowed under the uniform rules, it should be stricken.” and

- in the last “Point” of his memorandum of law, entitled:

**“POINT III  
PETITIONERS’ SUBMISSION ENTITLED ‘ANALYSIS OF THE  
NOVEMBER 23, 2022 ‘DECISION, ORDER AND JUDGMENT’ OF  
SUPREME COURT JUSTICE DAVID M. GANDIN” SHOULD BE  
STRICKEN”**

comparably stating (at p. 6):

“...First, this document was not brought pursuant to any provision of the New York State Civil Practice Law and Rules and, therefore, should be stricken by the Court on that basis. Second, 22 NYCRR §202.8-b of the Uniform Civil Rules for the Supreme Court & County Court, entitled ‘Length of Papers’ states that: ‘(a) Unless otherwise permitted by the court: (i) affidavits, affirmations, briefs and memoranda of law in chief shall be limited to 7,000 words each.’ Therefore, since Petitioners’ submission is almost double that allowed under the uniform rules, it should be stricken.”

Not only is this frivolous, but our “legal autopsy”/analysis (at p. 6) showed it to be frivolous in the context of highlighting the posture of the case before the Court in rendering its November 23, 2022 decision, wherein AAG Rodriguez had made the *verbatim* identical frivolous argument in response to our 29-page, single-space “legal autopsy”/analysis of his August 18, 2022 dismissal cross-motion – Exhibit A ([#88](#)) to our September 15, 2022 affidavit in opposition thereto ([#87](#)) and in support of

Petitioners' Jan. 19, 2023 Reply Affidavit in Further Support of Dec. 16, 2022 Motion [R.901-907]

our motion for sanctions, the Attorney General's disqualification, summary judgment on our ten causes of action, and other relief ([#93](#)). Now, as then, AAG Rodriguez:

- conceals that the “legal autopsy”/analysis is an exhibit to our moving affidavit;
- conceals that the CPLR permits exhibits; and
- conceals that 22 NYCRR §208.8-b imposes no word limit on exhibits.

5. As for AAG Rodriguez' predecessor Point I and Point II of his memorandum of law, they, like ¶¶ 9-11 of his affirmation, rest on the flagrant fraud that our December 16, 2022 motion is evidentiarily insufficient and “baseless” – which he asserts without identifying our Exhibit 1 “legal autopsy”/analysis, where ALL the evidentiary particulars are presented, with NO rebuttal from him as to their sufficiency and accuracy.

6. Likewise, the “Procedural History” of AAG Rodriguez' memorandum of law (at pp. 1-2) is flagrantly fraudulent, with its repetition of deceptions and concealments already exposed by our Exhibit 1 “legal autopsy”/analysis – to which he has now added a new one, his two-sentence paragraph (at p. 2):

“On August 18, 2022, Defendants opposed Petitioners' Motion for Preliminary Injunctive Relief and cross-moved to dismiss the Petition/Complaint. NYCEF No. 79. By Decision and Order dated November 23, 2022, the Court dismissed all causes of action. NYSCEF Nos. 111- 116.)”,

*verbatim* identical to ¶¶ 5 and 6 of his affirmation, both making it appear that his August 18, 2022 dismissal cross-motion was UNOPPOSED, when it was blown to smithereens by our 29-page, single-spaced “legal autopsy”/analysis ([#88](#)) – Exhibit A to our September 15, 2022 affidavit in opposition to his dismissal cross-motion ([#87](#)) and in support of our September 15, 2022 motion ([#93](#)), as to which the Court's November 23, 2022 decision, to achieve its self-interested, predetermined end, made NO findings of fact or conclusions of law.



Petitioners' Jan. 19, 2023 Reply Affidavit in Further Support of Dec. 16, 2022 Motion [R.901-907]

7. As stated at the outset of our Exhibit 1 “legal autopsy”/analysis of the November 23, 2022 decision ([#121](#)):

“As hereinafter shown, Justice Gandin knew himself to be without jurisdiction pursuant to Judiciary Law §14 by reason of his financial and other interests, but, rather than acknowledging and confronting that issue – and his bias resulting from same – he flagrantly corrupted the judicial process, in tandem with the State Attorney General, a respondent, representing herself and her fellow respondents.<sup>fn2</sup> The result is a decision that cannot be justified, is ‘so totally devoid of evidentiary support as to render [it] unconstitutional under the Due Process Clause’<sup>fn3</sup> of the United States Constitution and New York State Constitution, and is a criminal act, violating a succession of provisions of New York’s Penal Law, including:

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

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

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

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

petitioners stated:

‘In this major lawsuit, with ten causes of action exposing the corruption of New York’s public protection/ethics entities, enabling and abetting the corruption of New York state governance involving an ‘off the constitutional rails’ state budget and massive larceny of taxpayer monies,

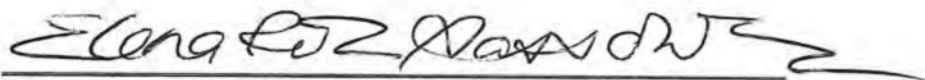
Petitioners' Jan. 19, 2023 Reply Affidavit in Further Support of Dec. 16, 2022 Motion [R.901-907]

including by pay raises to New York's state judicial, executive, and legislative constitutional officers based on 'false instrument' reports, Respondent Attorney General Letitia James, a pay raise beneficiary, is representing herself and her nine co-respondents. Appearing for her, 'of Counsel', is Assistant Attorney General Gregory Rodriguez, whose August 18, 2022 cross-motion (##79-82) to dismiss the June 6, 2022 verified petition is not just frivolous, but a 'fraud on the court',<sup>fn</sup> fashioned, from beginning to end, on knowingly false and misleading factual assertions, material omissions,<sup>fn</sup> and on law that is inapplicable, misstated, or both.

Such litigation fraud repeats AAG Rodriguez' comparable litigation fraud by his June 27, 2022 motion to dismiss the petition (##50-58), already demonstrated by petitioners' June 28, 2022 opposing affidavit (##61-64). It additionally follows upon the fraudulent advocacy of his colleague, Assistant Attorney General Stacey Hamilton, at the July 7, 2022 oral argument on petitioners' order to show cause for a TRO/preliminary injunction (##66-72), of which AAG Rodriguez was furnished notice and the transcript proof.<sup>fn</sup> That the Court permitted this prior litigation fraud, indeed rewarded it, has plainly emboldened Attorney General James and her subordinates to do the same a third time, secure in the belief that the Court, being a pay raise beneficiary itself, will allow them to get away with everything." (#121, at pp. 1-2, bold added, hyperlinking and underlining in the original).

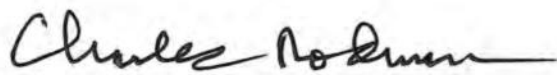
The Court's duty, on this last motion (#119), is to confront what was "**hereinafter shown**" – or to vacate its November 23, 2022 "DECISION, ORDER and JUDGMENT", *pronto*.

Petitioners' Jan. 19, 2023 Reply Affidavit in Further Support of Dec. 16, 2022 Motion [R.901-907]



ELENA RUTH SASSOWER

Sworn to before me this  
19<sup>th</sup> day of January 2023



Notary Public

CHARLES B. RODMAN  
Notary Public, State of New York  
No. 4620811  
Qualified in Westchester County  
Commission Expires 12/31/2025

Ex. 2 to Petitioners' Jan. 19, 2023 Reply Affidavit: Jan 9, 2023 e-mail exchange [R.908-909]

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Monday, January 9, 2023 4:27 PM  
**To:** 'Gandin Chambers'  
**Cc:** 'Rodriguez, Gregory'  
  
**Subject:** **CJA's Dec. 16, 2022 reargument/vacatur motion -- CJA v. JCOPE, et al.; Index No. 904235-22**

**TO: Supreme Court Justice David Gandin**

On December 23<sup>rd</sup>, Deputy Bureau Chief Rodriguez requested my consent to a two-week adjournment of the January 6<sup>th</sup> return date of petitioners' December 16<sup>th</sup> reargument/vacatur motion, which I gave. The exchange of e-mail is below.

He then e-filed a December 23<sup>rd</sup> letter to the Court concerning the adjournment ([#124](#)). However, [NYSCEF](#) does not reflect any so-ordering of the letter by the Court.

Please advise.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)  
914-421-1200

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**From:** Rodriguez, Gregory <[Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)>  
**Sent:** Friday, December 23, 2022 11:37 AM  
**To:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
  
**Subject:** **RE: no objection, so long as you forward the reargument/vacatur motion to respondent AG James -- RE: CJA v. JCOPE, et al.; Index No. 904235-22**

Thank you and happy holidays!

Greg

Gregory J. Rodriguez  
Deputy Bureau Chief  
Litigation Bureau  
New York State Office of the Attorney General  
The Capitol  
Albany, NY 12224  
Direct Line: (518) 776-2612  
E-Mail: [Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)

Ex. 2 to Petitioners' Jan. 19, 2023 Reply Affidavit: Jan 9, 2023 e-mail exchange [R.908-909]

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>

**Sent:** Friday, December 23, 2022 11:02 AM

**To:** Rodriguez, Gregory <[Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)>; [elenaruth@aol.com](mailto:elenaruth@aol.com)

**Subject: no objection, so long as you forward the reargument/vacatur motion to respondent AG James -- RE: CJA v. JCOPE, et al.; Index No. 904235-22**

TO: Deputy Bureau Chief Rodriguez

I have no objection, so long as you furnish the reargument/vacatur motion to your superiors – starting at the top with respondent Attorney General James – so that appropriate, if way belated, steps are taken consistent with professional and ethical responsibilities.

Happy holidays and new year.

Elena Sassower

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**From:** Rodriguez, Gregory <[Gregory.Rodriguez@ag.ny.gov](mailto:Gregory.Rodriguez@ag.ny.gov)>

**Sent:** Friday, December 23, 2022 10:25 AM

**To:** [elena@judgewatch.org](mailto:elena@judgewatch.org); [elenaruth@aol.com](mailto:elenaruth@aol.com)

**Subject: CJA v. JCOPE, et al.; Index No. 904235-22**

Good morning,

I am writing to request a two week extension, to January 16<sup>th</sup>, to respond to your recent motion (with the new return date of 1/20). I've had a number of other matters this week and am scheduled to be off for most of the upcoming holiday week. Please let me know.

Thank you,

Greg

Gregory J. Rodriguez  
Deputy Bureau Chief  
Litigation Bureau  
New York State Office of the Attorney General  
The Capitol  
Albany, NY 12224  
Direct Line: (518) 776-2612  
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AG's Feb. 24, 2023 Notice of Entry [R.910-911]

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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In the Matter of the Application of  
ELENA RUTH SASSOWER, CENTER FOR  
JUDICIAL ACCOUNTABILITY, INC.,

Petitioners,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

NYS LEGISLATIVE ETHICS COMMISSION, NYS  
OFFICE OF THE INSPECTOR GENERAL, KATHY  
HOCHUL, ANDREA STEWART-COUSINS, CARL E.  
HEASTIE, LETITIA JAMES, NYS JOINT  
COMMISSION ON PUBLIC ETHICS,

Respondents.

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**NOTICE OF ENTRY**

Index No. 904235-22

Judge Gandin

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order in this  
action entered in the Office of the County Clerk of Albany County on February 15, 2023.

Dated: Albany, New York  
February 24, 2023

LETITIA JAMES  
Attorney General of the State of New York  
Attorney for Respondents Thomas P. DiNapoli  
The Capitol  
Albany, New York 12224

By: *S/Gregory J. Rodriguez*  
Gregory J. Rodriguez  
Assistant Attorney General, of Counsel  
Telephone: (518) 776-2612  
Fax: (518) 915-7738 (Not for service of papers)

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AG's Feb. 24, 2023 Notice of Entry [R.910-911]

TO: Center for Judicial Accountability, Inc.,  
And Elena Ruth Sassower (**via NYSECF**)

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

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

AD Docket #CV-23-0115

Appellants,

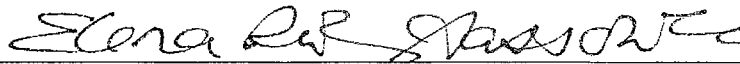
-against-

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS,  
LEGISLATIVE ETHICS COMMISSION, NEW YORK STATE  
INSPECTOR GENERAL, KATHY HOCHUL, in her official capacity as  
GOVERNOR OF THE STATE OF NEW YORK, ANDREA STEWART-COUSINS,  
in her official capacity as TEMPORARY SENATE PRESIDENT, &  
the NEW YORK STATE SENATE, CARL HEASTIE, in his official capacity  
as ASSEMBLY SPEAKER, & the NEW YORK STATE ASSEMBLY,  
LETITIA JAMES, in her official capacity as ATTORNEY GENERAL  
OF THE STATE OF NEW YORK, THOMAS DiNAPOLI, in his official capacity  
as COMPTROLLER OF THE STATE OF NEW YORK,

Respondents.

----- X  
**Stipulation in Lieu of Certification Pursuant to CPLR §5532**

IT IS HEREBY STIPULATED that the foregoing constitutes the record on appeal, being true copies of the documents constituting the record of this hybrid CPLR Article 78 proceeding, CPLR §3001 declaratory judgment action, and State Finance Law Article 7-A citizen-taxpayer action on the NYSCEF docket for Albany County/Supreme Court #904235-22.



ELENA RUTH SASSOWER, unrepresented 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: August 9, 2023



LETITIA JAMES, Attorney General of the State of New York,  
Respondent and Counsel for Respondents  
BY: Assistant Solicitor General Beezly Kiernan

Dated: August 14, 2023