

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ANDREW M. CUOMO,

Plaintiff,

v.

NEW YORK STATE JOINT COMMISSION ON
PUBLIC ETHICS,

Defendant.

COMPLAINT

Index No:

Plaintiff, former Governor of New York State, Andrew M. Cuomo (“Governor Cuomo”), by and through his undersigned attorneys, for his Complaint against Defendant New York State Joint Commission on Public Ethics (“JCOPE”), alleges as follows:

NATURE OF THIS ACTION

1. Governor Cuomo brings this action because JCOPE: (a) has prejudged against him factual and legal issues central to the question of whether he violated Public Officers Law Section 74 (“Section 74”) and demonstrated extraordinary bias against him; (b) has issued unlawful resolutions against him, which even the New York State Attorney General informed JCOPE were unlawful; (c) recently committed to hiring an outside law firm to enforce those unlawful resolutions if the Attorney General does not; and (d) has thereby committed flagrant violations of the due process rights secured to him by the United States Constitution, the New York Constitution, and by Executive Law Section 94 (“Section 94”), the statute that governs the exercise of the powers entrusted to JCOPE.

2. To prevent JCOPE from continuing to violate his constitutional rights, Governor Cuomo seeks the intercession of this Court. JCOPE should be enjoined from proceeding

with the adjudicatory process unless and until all its commissioners who have prejudged Governor Cuomo are disqualified.

THE PARTIES

3. Governor Cuomo resides in New York State.

4. JCOPE is a government agency established by Executive Law § 94 and is within the New York State Department of State. JCOPE’s principal office is located at 540 Broadway, Albany, New York 12207.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to CPLR § 3001.

6. This Court has personal jurisdiction over JCOPE pursuant to CPLR §§ 301 and 302(a)(1).

7. Albany County is the proper venue for this proceeding under CPLR § 505(a).

FACTUAL BACKGROUND

A. JCOPE’s Investigatory and Adjudicatory Authority

8. JCOPE consists of 14 commissioners. N.Y. Exec. L. § 94(1). Eight of the commissioners are legislative appointees: three are appointed by the Temporary President of the Senate; three are appointed by the Speaker of the Assembly; one is appointed by the minority leader of the Senate; and one is appointed by the minority leader of the Assembly. *Id.* § 94(2). The other six commissioners are appointed by the Governor and the Lieutenant Governor. *Id.* JCOPE commissioners serve five-year terms. *Id.* § 94(3).

9. JCOPE is charged with conducting investigations, *inter alia*, into violations of Public Officers Law §§ 73, 73-a, and 74.

10. JCOPE has statutory authority to initiate an investigation if the Commission has received a complaint alleging a violation of ethics law or if the Commission “determines on its own initiative to investigate a possible violation.” Exec. L. § 94(13)(a). When it initiates an investigation, JCOPE must notify the individual (referred to as the respondent) and provide him or her with an opportunity to respond. Because the respondent must be given at least fifteen days to respond, JCOPE’s notice is commonly referred to as a “fifteen-day letter.”

11. Once JCOPE decides to initiate an investigation (either on its own initiative or via a complaint or referral), JCOPE has sixty days to vote on whether to conduct a “full investigation” of the respondent’s conduct to determine whether “a substantial basis exists to conclude that a violation of law has occurred.” Exec. L. § 94(13)(a); 19 NYCRR § 941.3(b)(1). Following a full investigation, JCOPE must determine whether to proceed to a hearing. If JCOPE determines to proceed to a hearing, it must provide the respondent with a “Notice of Substantial Basis Investigation and Hearing,” which must notify the respondent of the alleged violations of law and the factual basis for those allegations.” Exec. L. § 94(13)(b); 19 NYCRR § 941.3(c).

12. If such a notice is issued by JCOPE, a hearing officer conducts the hearing. Prior to the hearing, JCOPE must provide to respondent any evidence it plans to use at the hearing. Exec. L. § 94(13)(b). At the hearing, a respondent has the right to appear in person, be represented by an attorney, give sworn testimony, and present evidence. *Id.*; 19 NYCRR § 941.5(a).

13. Within 60 days of the conclusion of hearing, the hearing officer issues findings of fact and, provided that the respondent is not a member of the legislature or a legislative employee, may recommend an “appropriate” penalty. 19 NYCRR § 941.13(a). The respondent and JCOPE’s staff, respectively, then have 30 days to respond to the hearing officer’s factual findings and recommendations by submitting briefs to JCOPE’s commissioners. *Id.* § 941.13(b).

14. The ultimate decisionmakers are JCOPE's commissioners. Following the receipt of the hearing officer's report, JCOPE's commissioners "vote on whether *or not* to issue a Substantial Basis Investigation Report and issue a Notice of Civil Assessment." *Id.* § 941.13(c) (emphasis added). That vote is on whether the respondent has or has not committed a violation of the ethics law. "In the Substantial Basis Investigation Report, [JCOPE] may adopt the findings of fact and recommendation of the hearing officer in whole or in part, or it may reverse, remand and/or dismiss the hearing officer's finding of fact and recommendation based upon the record produced at the hearing." *Id.* The plain language of JCOPE's regulations indicates that the Commission need not defer at all to the hearing officer's findings, but instead may wholly dismiss the hearing officer's finding of fact and recommendation. *See id.*

15. All proceedings related to JCOPE's substantial basis investigation and hearing and its consideration of whether to issue a substantial basis investigation report are confidential. Exec. L. § 94(13)(b); 19 NYCRR § 941.10. Any member of JCOPE who breaches confidentiality "shall be investigated by the inspector general" and, if such breach is determined to be intentional and without authorization, "shall be guilty of a class A misdemeanor." Exec. L. § 94(9-a)(c).

B. JCOPE's Approval of the Book

16. JCOPE regulations include "rules concerning outside activities . . . by persons subject to its jurisdiction." Exec. L. § 94(17)(a). As relevant here, those rules do not prohibit statewide elected officials from engaging in income-producing outside activities, but require the official to obtain JCOPE's approval under specified circumstances. 19 NYCRR § 932.5. A violation of those rules, however, "in and of itself shall not be punishable" by JCOPE,

“unless the conduct constituting the violation would otherwise constitute a violation of [Executive Law § 94].” Exec. L. § 94(17)(a).

17. On July 10, 2020, the Special Counsel to the Governor submitted a written request to Martin L. Levine, Deputy General Counsel of JCOPE, for JCOPE’s approval for Governor Cuomo to author and publish a book.

18. On July 17, 2020, by a letter from Mr. Levine, JCOPE granted Governor Cuomo’s request for approval, provided that certain conditions were met (the “Approval Letter”). Among those conditions were (i) that “[n]o State property, personnel or other resources may be utilized for activities associated with the book” and (ii) that “[t]he subject matter must be sufficiently unrelated to the Governor’s official duties so that authorship or the advice or material provided in the book cannot be viewed as part of the Governor’s job.” *See* Approval Letter, attached hereto as Exhibit A.

19. Shortly thereafter, the Special Counsel to the Governor set forth in a memorandum her communications with JCOPE about the book and her understanding about staff’s ability to assist with the book on their own time. In the memorandum, the Special Counsel stated: “Even prior to contacting JCOPE, I confirmed that no state resources would be used in writing the book, and that any staff who were assisting the Governor on the book would do so on their own time, either on evenings or weekends, or by taking leave.” The memorandum also states that, prior to JCOPE providing written approval for the book, the Special Counsel “explained [to Mr. Levine] in broad terms that the Governor was writing a new memoir, with a focus on the COVID-19 crisis.” *See* Special Counsel Memorandum dated August 19, 2020, attached hereto as Exhibit B (“Mr. Levine and I specifically discussed that the Governor could write about his management of the COVID crisis”).

20. On or about October 13, 2020, the book, American Crisis: Leadership Lessons from the COVID-19 Pandemic (the “Book”) was published.

C. JCOPE’s 15-Day Letter Regarding the Book

21. On April 9, 2021, JCOPE sent to Governor Cuomo a fifteen-day letter. The 15-Day Letter asserted that conduct by Governor Cuomo in connection with the Book “may constitute violations of Public Officers Law §§ 74 (3)(a), (b), (c), (d) and (h).” It alleged that the Governor may have “abused [his] State position for personal benefit, including but not limited to utilizing State property, personnel or other resources of the State for activities associated with the book and promoting the book during official State appearances.” The 15-Day Letter was virtually devoid of factual allegations to support the charges, asserting only skeletal allegations in two sentences. *See* 15-Day Letter, attached hereto as Exhibit C.

22. Through his attorneys, Governor Cuomo responded in writing to the 15-Day Letter on May 10, 2021. Governor Cuomo denied that he had committed any violation of Public Officer Law § 74 and advanced facts and legal authority supporting his denial. The Governor acknowledged that several of his high-level aides had helped with the Book but stated that they had done so on their own time. Governor Cuomo went on to argue—citing judicial precedent and JCOPE’s own prior guidance—that this assistance was not a violation of Section 74.

23. On information and belief, on or around May 25, 2021, through a vote of its commissioners, JCOPE determined, pursuant to Exec. L. § 94(13)(a), to commence a full investigation of the facts relevant to its charge that Governor Cuomo may have committed violations of Public Officers Law § 74 in connection with the Book.

24. On August 10, 2021, Governor Cuomo resigned from office.

D. JCOPE Publicly Issues Unlawful Resolutions Against Governor Cuomo Making Factual and Legal Findings Without Any Process and Exceeding JCOPE's Authority

1. Resolutions 21-03 and 21-04 Make Findings Without Any Process

25. On November 16, 2021, without any process such as a Notice of Substantial Basis for charges, hearing before a hearing officer, or provisions of evidence or opportunity to respond, JCOPE publicly issued Resolution 21-03, with twelve commissioners voting in favor (the "Twelve Commissioners") and one dissenting vote.¹ Resolution 21-03 acted outside the statutory regime and purported to revoke the Approval Letter based on the following "findings:"

- a. "[C]ontrary to the representations made on behalf of Governor Cuomo, and not disclosed to the Commission, State property, resources and personnel, including staff volunteers were used in connection with the preparation, writing, editing and publication of the Book";
- b. "[C]ontrary to the representations made in the Approval Request Letter, the Book is not in compliance with item three of the Commission's nine established conditions to approval as stated in the Conditional Approval Letter, in that it is a work that was developed as part of Governor Cuomo's job responsibilities and is substantially related to his job responsibilities"; and
- c. "[T]he Approval Request Letter for the Book submitted on behalf of Governor Cuomo contained material omissions and misrepresentations, and that each of said material omissions and misrepresentations, individually, constitutes a ground for revocation."

JCOPE Resolution 21-03, attached hereto as Exhibit D.

26. JCOPE made these determinations before providing Governor Cuomo any adjudicatory process, as he was entitled to under New York law.

27. Moreover, although JCOPE proceedings are legally required to be confidential and it is a crime for any JCOPE commissioner or staffer to intentionally release

¹ The Twelve Commissioners are: Jose Nieves, Richard F. Braun, Terryl L. Brown, Colleen C. DiPirro, Sharon Stern Gerstman, C. Randall Hinrichs, Marvin E. Jacob, Gary J. Lavine, James W. McCarthy, David J. McNamara, George H. Weissman, and James A. Yates.

confidential information without authorization, *see* N.Y. Exec. L. § 94(9-a)(c), everything leading up to Resolution 21-03 was leaked to the press.

28. On August 23, 2021, the *Times Union* reported that Commissioner Gary Lavine “plan[ned] to introduce [a] motion revoking Cuomo’s permission to write” the Book because he believed that the Special Counsel to the Governor had made “material misrepresentations by promising that Cuomo would not use his government staff to help produce the book.” *See* “As JCOPE eyes Cuomo, will his appointees remain,” *TIMES UNION*, Aug. 23, 2021. At the September 14, 2021 JCOPE meeting, Commissioner Lavine introduced the motion previewed by the *Times Union* in the August 23, article, and the motion failed by a vote of 7-6. *See* “After rebuff, JCOPE again refers Cuomo leak to AG,” *TIMES UNION*, Sep. 14, 2021. At the October 19, 2021 JCOPE meeting, Commissioner Lavine again introduced the motion previewed by the *Times Union* and the motion failed by one vote. *See* “JCOPE fails to revoke Cuomo book approval,” *TIMES UNION*, Oct. 19, 2021.

29. On November 4, the *New York Post* reported that “[a] group of commissioners [were] pressuring . . . new chairman, Jose Nieves, to reconsider the [matter] after he was the deciding ‘no’ vote at the body’s last meeting in October.” *See* “JCOPE Commissioners want one more try at revoking Andrew Cuomo \$5.1M book deal,” *N.Y. POST*, Nov. 4, 2021. A “source” told the paper that Mr. Nieves now “appear[ed] ‘ready’ to support rescinding the approval” and that a “private conference call” was scheduled “to talk about whether or not [the Commission] ha[d] enough votes to claw back the rubber stamp [approval] at their next meeting set for Nov. 16.” *Id.* The *New York Post*’s report proved accurate, given that at the next JCOPE meeting on November 16, 2021, the Twelve Commissioners (including Mr. Nieves) issued Resolution 21-03.

30. On December 14, 2021, JCOPE publicly issued another resolution—Resolution 21-04—with the Twelve Commissioners voting in favor. Resolution 21-04 purported to order Governor Cuomo, within 30 days, to pay over to the Attorney General an amount equal to all proceeds earned from the Book. *See* JCOPE Resolution 21-04, attached hereto as Exhibit E. In issuing Resolution 21-04, JCOPE made the following findings:

- a. “[A]s a consequence of the revocation of the Conditional Approval Letter, Governor Cuomo lacked legal authority to engage in outside activity and receive compensation with regard to the Book while employed by the State of New York”; and
- b. “[I]n the absence of JCOPE’s approval of his outside activity in connection with the Book, Governor Cuomo is not legally entitled to retain compensation paid to him, in any form, for his outside activities related to the Book.”

Id. Once again, JCOPE took action without an adjudicatory hearing. Further, JCOPE made a disgorgement finding without any analysis or rationale regarding the appropriate amount attributable to any purported violation of law.

31. Resolution 21-04 also included the following bewildering statement: because “no request has been made to the Commission to change or retract Resolution 21-03 [and because] Governor Cuomo has made no further request for approval of outside activity,” disgorgement was appropriate. *Id.* Notably, Resolution 21-03 did not invite Governor Cuomo to respond, nor did it suggest that its purported “findings” were other than final. *See* Ex. D. Indeed, Resolution 21-03 was not even served on Governor Cuomo’s counsel.

32. Resolution 21-04 further provided that if Governor Cuomo did not pay to the Attorney General all compensation paid to him for the Book within 30 days as directed by JCOPE, “enforcement of such order is hereby referred to the Attorney General” and the Attorney should “determine the identity of appropriate recipient(s) of the Book Proceeds under the law and distribute such funds accordingly.” Ex. E.

33. On December 15, 2021, the day after the issuance of Resolution 21-04, the *New York Post* reported that JCOPE Commissioner Lavine warned Governor Cuomo against bringing a legal challenge to JCOPE's actions because such litigation "could lead to more damning details about how the book deal came about, including what [Lavine] suspected was potential collusion between the then-governor and pro-Cuomo JCOPE staffers." See "An Andrew Cuomo lawsuit to keep \$5M book profits risks digging up more dirt: Lavine," N.Y. POST, Dec. 15, 2021. Commissioner Lavine also accused Governor Cuomo's senior staff of working with a supposed "Cuomo cohort" within JCOPE "to operate in secret and kill investigations and not be held accountable." *Id.*

2. The Attorney General Informs JCOPE That Resolution 21-04 Is Unlawful

34. Two days after the issuance of Resolution 21-04, the Attorney General's Office informed JCOPE in a December 16, 2021 letter that its actions were unlawful, i.e., that JCOPE needed to conduct a full investigation and make appropriate findings based on a developed record before it could impose a disgorgement remedy. See Letter from State of New York Office of the Attorney General to Executive Director of JCOPE, dated December 16, 2021, attached hereto as Exhibit F ("[a]ny referral to the OAG's Civil Recoveries Bureau would need to include a Substantial Basis Investigation Report . . . related to this matter. This would include findings regarding violations of POL § 73 and/or §74, and specific sums attributable to penalties and disgorgement"). The Attorney General's Office stated that any referral "would need to be accompanied by the record of the administrative process, and the statutory authority for the decision, the amount of the imposed fines and penalties, and a determination concerning the appropriate amount of disgorgement attributable to the violation of law." *Id.* The Attorney General's Office further stated that it must "adhere to statutory requirements" and there "does not

appear to be statutory authority to order payment directly to the Attorney General or for the Attorney General to determine recipients of such payments.” *Id.*

35. Thereafter, Commissioner Lavine publicly criticized the Attorney General’s response, calling it “a deliberate stall by [Attorney General] James” “for the purposes of delaying action by [JCOPE].” “‘Deliberate stall’: Ethics commish rips AG on \$5M Cuomo COVID clawback,” N.Y. POST, Dec. 22, 2021.

36. In response to Commissioner Lavine, a spokesperson for the Attorney General emphasized the blatantly unlawful nature of JCOPE’s actions: “There are rules and laws in this state, and in stark contrast to JCOPE, the attorney general’s office actually follows and enforces those laws universally, not only when expedient.” *Id.*

37. None of the Twelve Commissioners has ever disavowed Mr. Lavine’s statements to the press.

38. According to the *Times Union*, the Twelve Commissioners responded to the Attorney General’s December 16, 2021 letter with one of their own, disputing the Attorney General’s legal analysis and contending that Section 94 of the Executive Law somehow grants JCOPE “exclusive jurisdiction” to issue Resolution 21-04 because it relates to “the authorization of . . . an outside activity involving the head of a state agency or a statewide elected official.” *See* “Battle over Cuomo’s book splits ethics panel with its director,” TIMES UNION, Dec. 27, 2021. More specifically, the letter stated that JCOPE is “required to deny or revoke any authorization . . . where, as here, material misrepresentations have been made in the request for approval or the conditions of such approval have been violated or both.” *Id.* Tellingly, the *Times Union* reported that Sanford Berland, JCOPE’s Executive Director, refused to sign the letter. *Id.*

39. On March 15, 2022, JCOPE issued a 37-page Notice of Substantial Basis Investigation and Hearing related to the Book, informing Governor Cuomo that an adjudicatory hearing would commence on April 12, 2022 (“Adjudicatory Proceeding”).² The Notice states that the evidence against Governor Cuomo is “overwhelming,” “incontrovertible,” and “beyond dispute.”

3. Resolution 22-02 and JCOPE’s Commitment to Hire Outside Counsel to Enforce the Unlawful Resolutions and Bypass the Attorney General

40. The March 15, 2022 Notice did not end matters. On March 18, 2022, with one Commissioner dissenting, JCOPE publicly issued a third resolution, JCOPE Resolution 22-02. *See* JCOPE Resolution 22-02, attached hereto as Exhibit G. Resolution 22-02 doubled down, despite JCOPE having been informed by the Attorney General of the unlawful nature of its actions. JCOPE asserted that as a consequence of JCOPE’s revocation of the Approval Letter, Governor Cuomo “lacked legal authority to engage in outside activity and receive compensation with regard to the Book”; and JCOPE noted that the Attorney General had “declined to enforce the Disgorgement Order [Resolution 21-04] on grounds that the Commission believes to be invalid as a matter of law.” *Id.*

41. Resolution 22-02, once again, ordered Governor Cuomo “to pay an amount equal to the Book Proceeds to the party or parties that paid the Book Proceeds to [him],” so that he “does not retain the benefit of outside activities in which he engaged in violation of law.” *Id.* And the Resolution 22-02 announced that if (a) the Governor failed to do so within 30 days, and (b) the Attorney General did not enforce the disgorgement order, JCOPE “shall proceed with all actions necessary to seek authority and funding necessary to engage outside counsel to enforce

² The April 12, 2022 hearing date was subsequently changed to a “pre-hearing scheduling conference” upon agreement of the parties.

[its] Disgorgement Order.” *Id.* In other words, JCOPE planned to bypass the Attorney General and hire its own private outside counsel to enforce resolutions that the Attorney General already told JCOPE were unlawful.

42. As with unlawful Resolutions 21-03 and 21-04, JCOPE Resolution 22-02 was issued without any factual record or adjudicatory proceeding.

43. Not surprisingly, JCOPE’s Resolution 22-02 and confidential internal JCOPE discussions leading to that resolution were previewed in the press before the public JCOPE meeting. On March 17, 2022, the *Times Union* reported that JCOPE was considering a “new plan” which involved “issu[ing] an order demanding the former governor quickly repay the money to the book publisher [and] . . . potentially hir[ing] a special counsel to enforce the repayment.” *See* “Ethics chair makes last push to force Cuomo to repay book profits,” TIMES UNION, Mar. 17, 2022. The article noted that “a number of commissioners [] believe[d] that the attorney general is wrong about the need to conduct a full investigation.” *Id.* Clearly, where Governor Cuomo is concerned, JCOPE’s confidentiality obligations are ignored.

44. Simply stated, never in the history of New York State has an agency so breathtakingly and irresponsibly prejudged a matter on which it is the final decisionmaker. Both liability (the Governor engaged in “outside activities . . . in violation of law”) and penalty (“an amount equal to the Book Proceeds”) have been predetermined. On this record, no reasonable person could conclude that JCOPE can now fairly adjudicate whether Governor Cuomo violated Public Officers Law § 74. Governor Cuomo did not violate Section 74, but JCOPE will never make such a finding because of their public, prejudicial statements and determinations before providing any process to the Governor.

45. Further, JCOPE has (a) committed itself to a course of conduct that the Attorney General has concluded to be unlawful and (b) unilaterally determined that it can bypass the Attorney General and retain its own private counsel to enforce the unlawful resolutions.

JCOPE HAS VIOLATED GOVERNOR CUOMO'S DUE PROCESS RIGHTS

46. “It is beyond dispute that an impartial decision maker is a core guarantee of due process, fully applicable to adjudicatory proceedings before administrative agencies.” *Matter of 1616 Second Ave. Rest. v. New York State Liq. Auth.*, 75 N.Y.2d 158, 161–62 (1990); accord *In re Murchison*, 349 U.S. 133, 136 (1955) (“A fair trial in a fair tribunal is a basic requirement of due process.”); *People v. Novak*, 30 N.Y.3d 222, 225–26 (2017) (“The right to an impartial jurist is a ‘basic requirement of due process.’”) (citations omitted).

47. Where “an administrative official has made public comments concerning a specific dispute that is to come before him in his adjudicatory capacity, he will be disqualified on the ground of prejudgment if ‘a disinterested observer may conclude that [he] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.’” *1616 Second Ave. Rest.*, 75 N.Y.2d at 162. The mere “impression” that an official has prejudged a matter lends an “impermissible air of unfairness to the proceeding.” *Id.* “[P]ublic statements that indicate prejudgment are especially problematic,” because they “may have the effect of entrenching [the official] in a position which he has publicly stated, making it difficult, if not impossible, for him to reach a different conclusion in the event he deems it necessary to do so after consideration of the record.” *Id.* That imposes an “impermissible burden” on the petitioner. *Id.* at 164; see *In re Murchison*, 349 U.S. at 136 (“[O]ur system of law has always endeavored to prevent even the probability of unfairness”); see also *Mayberry v. Pennsylvania*, 400 U.S. 455, 469 (1971) (Harlan, J., concurring) (“[T]he appearance of even-handed justice . . . is at the core of due process”).

48. JCOPE has prejudged the key issues in the upcoming Adjudicatory Proceeding against Governor Cuomo and therefore has violated his constitutional due process right to an impartial decision maker. *See supra* ¶ 25 (“Resolution 21-03 acted outside the statutory regime and purported to revoke the Approval Letter”); ¶ 30 (“Resolution 21-04 purported to order Governor Cuomo, within 30 days, to pay over to the Attorney General an amount equal to all proceeds earned from the Book”); ¶ 34 (“Two days after the issuance of Resolution 21-04, the Attorney General’s Office informed JCOPE in a December 16, 2021 letter that its resolutions were unlawful”); ¶ 38 (“Commissioners responded to the Attorney General’s December 16, 2021 letter with one of their own, disputing the Attorney General’s legal analysis . . . As reported by the *Times Union*, Sanford Berland, JCOPE’s Executive Director, refused to sign the letter”); ¶ 41 (“Resolution 22-02, once again, ordered Governor Cuomo ‘to pay an amount equal to the Book Proceeds to the party or parties that paid the Book Proceeds to [him],’ so that he ‘does not retain the benefit of outside activities in which he engaged in violation of law.’”). At a minimum, JCOPE’s actions have created the unmistakable impression that it has prejudged the issues, thereby irretrievably tainting any administrative proceeding against him. JCOPE’s failure to abide by its statutory confidentiality obligations and insistence on pursuing a lawless course of action that the even the Attorney General concluded to be unlawful are further evidence of its bias against Governor.

FIRST CAUSE OF ACTION
(Due Process Violation – 42 U.S.C. § 1983)

49. Governor Cuomo repeats and re-alleges the allegations contained within the preceding paragraphs as if set forth at length herein.

50. Under the United States and New York Constitutions, as well as under the investigatory authority entrusted to JCOPE in Exec. L. § 94, an individual has a due process right

to an impartial adjudicator. JCOPE violated Governor Cuomo's right to an impartial adjudicator by publicly issuing the resolutions, which prejudice the issues to be determined in the Adjudicatory Proceeding. The resolutions and public statements by JCOPE commissioners have created impermissible unfairness to the Adjudicatory Proceeding and place an impermissible burden on Governor Cuomo.

51. Governor Cuomo has no adequate or other remedy at law.

52. Accordingly, Governor Cuomo is entitled to an order enjoining JCOPE from conducting the Adjudicatory Proceeding or otherwise proceeding with an enforcement action against him unless and until the commissioners who approved Resolutions 21-03, 21-04 and/or 22-02 are disqualified.

53. In addition to the declaratory and injunctive relief sought herein, Governor Cuomo is also entitled to an award of attorney fees, costs, and disbursements pursuant to 42 U.S.C. § 1988.

PRAYER FOR RELIEF

WHEREFORE, Governor Cuomo respectfully requests that the Court enter an order and judgment:

A. Enjoining JCOPE from conducting the adjudicatory hearing or otherwise prosecuting the enforcement action against Governor Cuomo unless and until the commissioners who approved Resolutions 21-03, 21-04 and 22-02 are disqualified;

B. Awarding Governor Cuomo attorney fees, costs, and disbursements pursuant to 42 U.S.C. § 1988; and

C. Awarding Governor Cuomo such other and further relief as this Court deems just, proper, and equitable.

Dated: New York, New York
April 1, 2022

GLAVIN PLLC

By:



Rita M. Glavin
Michaelene K. Wright
Katherine E. Petrino

156 West 56th Street, Suite 2004
New York, NY 10019
646-693-5505
Rglavin@glavinpllc.com

HOLWELL SHUSTER & GOLDBERG LLP

James M. McGuire
Zachary A. Kerner

425 Lexington Avenue
New York, New York 10017
(646) 837-8532
jmcguire@hsgllp.com

Attorneys for former Governor Andrew M. Cuomo