

**IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

COMMON CAUSE OF PENNSYLVANIA,	:	
et al.,	:	
	:	
Plaintiffs,	:	CIVIL ACTION No.
	:	1:CV-05-2036
v.	:	
	:	(Judge Kane)
COMMONWEALTH OF	:	
PENNSYLVANIA, et al.,	:	
	:	
Defendants.	:	

PLAINTIFFS' SECOND AMENDED COMPLAINT

INTRODUCTION

“I watched the formulation of all this up close with my ‘special connections’ to certain offices, **and it was much more unsavory than a lot know.**”

Those are the words – revealed publicly for the first time, along with numerous other inside glimpses into the Pennsylvania legislative and judicial process, in this Second Amended Complaint – of the wife of the chief of staff for Senate President Pro Tempore and Defendant Robert Jubelirer, describing the action at issue in this suit, the enactment of Act 44 of 2005.

How could the enactment of Act 44 be any more unsavory than what is currently known from the public record?

- It has been a matter of public record since as early as July 19, 2005 that the Chief Justice of the Pennsylvania Supreme Court admitted he was an active participant in secret negotiations drafting Act 44 and the primary architect pegging state salaries, including his own, to the salaries of designated federal officials.

- It is also a matter of public record, and therefore noted by every judge and justice in the Commonwealth, that the Chief Justice of the Pennsylvania Supreme Court publicly praised the courage of members of the General Assembly in passing the pay raise and denigrated mounting public opposition to the passage of Act 44 as nothing more than “knee jerk reaction.”
- It has been known since the sun rose the next morning on their *fait accompli* that a small cadre of legislative leaders forced their heretofore secret deal on the General Assembly and the public while cowering under a midnight summer sky, too afraid or contemptuous of the citizens of Pennsylvania to allow them any representation in the legislative process used to enact the pay raise legislation, nor any prior notice or opportunity to add their own voice to the secret deal struck in places known only to the elite judicial, legislative and executive actors involved.

- And finally, though they likely had nothing to fear from their negotiating partners in the state courts, they foreclosed – for good measure - any remnant of independent judicial review by state courts via a non-severability clause attached to the Act.

How, then, “much more unsavory” could it possibly have been? Sadly, based on what we now know of the long-standing context in which legislative and judicial leaders in Pennsylvania privately negotiate away the outcomes of the legislative and judicial processes in defiance of democratic norms and constitutional requirements, and consistent with what is already known on the public record, “unsavory” is insufficient to describe the mass constitutional torts potentially committed by officials at the highest levels of this Commonwealth.

Information derived from multiple, independent and credible sources, appended to this Second Amended Complaint in the form of sworn affidavits attest to a kind and quality of judicial and legislative conduct and interaction accepted as the norm in state government but so far beyond the norms of democratic governance as to shock any observer – including, apparently, someone who may have witnessed, the private negotiations that birthed Act 44.

Based on these sworn affidavits, plaintiffs believe discovery will establish a decade-long struggle by the Pennsylvania Supreme Court to coerce state funding whereby one or more justices of the Pennsylvania Supreme Court and leaders of the General Assembly negotiated legislation desired by the Court in exchange for rulings favorable to the legislative leadership on cases then pending before the Court challenging the constitutionality of the process by which important legislation was consistently enacted in secret in violation of Article III of the Pennsylvania Constitution. If it is true, as Plaintiffs now believe, that justices of the highest court of the state bartered their votes on cases important to the interpretation and jurisprudence of key state constitutional provisions - provisions which are at issue in this case, and designed to protect the political rights of all citizens of the Commonwealth to know of and participate at every stage of the legislative process through their elected representatives - in exchange for state funding desired by the Justices, it would, standing alone, constitute a current and ongoing violation of plaintiffs' due process and equal protection rights under both federal and state constitutions.

But, as far as this case is concerned, it is more: If this long-standing, accepted way of doing business between the branches

occurred in enactment of Act 44 – and the public admissions of the Chief Justice and other *alone* make credible the suggestion that what at least one witness has called “much more unsavory than a lot know” includes the way similar matters have been handled repeatedly in the past by the same actors – then the enactment of Act 44, whatever may have happened since to try to escape public ire and judicial review, itself constitutes a current and ongoing violation of Plaintiffs’ due process and equal protection rights under both federal and state constitutions, as well.

At bottom, the prospect that the Pennsylvania Supreme Court would continue to impose on the state’s legislative leaders, as they did in *Common Cause v. Commonwealth* (Common Cause I), the good government requirements of Article III of the Pennsylvania Constitution was such a threat to their power to control the legislative process and the representatives of the vast majority of the citizens of the Commonwealth that the leaders abandoned, with amazing rapidity, their decade long opposition to state funding of the Unified Judicial System and the hundreds of millions of dollars required to satiate the Supreme Court’s thirst for cash. Apparently, good government espoused by Article III of the state constitution had the same effect on leaders of the General Assembly as does light on a gaggle of vampires at dawn’s break. As soon

as the leaders became convinced that the state Supreme Court would decide pending Article III litigation against their personal legislative powers unless they relented to the Court's demand for state funding, they surrendered. The prospect of constitutional government, and a legislative process allowing for equal representation in the Commonwealth, was too much for these poor men to bear.

The affidavits attached to this Second Amended Complaint also raise questions, which require answers, as to the extent and methods used by any Defendant in this action to secure the desired salary increase which drove passage of Act 44 at issue in this case. In 1999, members of the Court demanded state funding for the Unified Judicial System and apparently were willing to use, in private negotiations, cases then pending before the Court as leverage against the legislative leadership to secure their demands. In 2005, one or more members of the Court agitated for a politically sensitive pay raise, in private negotiations, while important cases were then pending before the Court. The striking similarity of desired economic result, private negotiation and commonality of the judicial and legislative actors at work in both 1999 and 2005, all call into question whether similar sorts of conduct occurred during the process which led to the drafting and passage of Act 44. The affidavits as to the

overall context in which these events occurred, and the contemporaneous email appended hereto from a legislative insider, clearly indicate the public record on this issue is not complete. The answer to this question, whatever that answer may be, must be derived from a process of full discovery available to Plaintiffs under procedures allowed in a District Court of the United States.

Lastly, it is clear that that no state court in Pennsylvania – certainly not the Pennsylvania Supreme Court, under these unique factual circumstances - is sufficiently impartial or competent to hear any case in which every judge and justice of the Pennsylvania judiciary has an actual, not a merely hypothetical, pecuniary interest in the outcome. Nor can any state court properly decide any case challenging the constitutionality of legislative acts under Article III jurisprudence which, since 1999, is the product of a negotiated vote swap, a line of “case law” that now seems more akin to consideration paid for a commercial contract than that of decisional law properly afforded the status of precedent. Only a federal court can untangle the constitutional mess spawned from the process by which Act 44 was drafted, the judicial conflicts-of-interest it and the Act’s repeal created and the judicial/legislative compact that Plaintiffs now believe occurred in 1999 which has corrupted state constitutional case

law on Article III at issue in this case, as well as cases pending in state courts.

NATURE OF THE CASE

1. This is a civil action for injunctive and declaratory relief brought against the Commonwealth of Pennsylvania, its chief executive, its treasurer, the Chief Justice of the Pennsylvania Supreme Court and individual members and leaders of the Pennsylvania General Assembly.

2. Plaintiffs allege violation of their rights by Defendants under the United States Constitution as follows:

a. Based on information and belief, a negotiated deal, settlement or understanding begun in 1999 between one or more justices of the Pennsylvania Supreme Court and certain leaders of the General Assembly whereby legislative action desired by the Court was and potentially still is secured in exchange for judicial decisions desired by the legislative leaders, constitutes an ongoing violation of plaintiffs' right to due process of law afforded under the Fifth and Fourteenth Amendments to the United States Constitution;

b. Provisions of Pennsylvania Act 44 of 2005, Act of July 7, 2005, P.L. 201, No. 44, codified at 42 PA. CONS. STAT. ANN. §§ 1801-1810; 46 PA. CONS. STAT. ANN. §§ 1101-1107, 1301-1302; 71 PA. CONS.

STAT. ANN. §§ 1101-1105, (hereinafter the “Act” or “Act 44”) (repealed), violate Plaintiffs’ right to a fair hearing before an impartial tribunal as guaranteed to them under the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution;

c. Private conversations between the Chief Justice of the Pennsylvania Supreme Court and members of the General Assembly and the executive branch to draft key provisions of Act 44 violate Plaintiffs’ right to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution;

d. The process of enactment of Act 44 violates, and constitutes part of an ongoing pattern and practice of statutory enactment that violates, Plaintiffs’ right to equal protection under law, as guaranteed to them under the Fourteenth Amendment to the United States Constitution, and of due process of law guaranteed to them under the Fifth and Fourteenth Amendments to the United States Constitution; and

e. The process of enactment of Act 44 violates, and constitutes part of an ongoing pattern and practice of statutory enactment that violates Plaintiffs’ right to exercise in a timely fashion political speech with their elected representatives before pending legislation is enacted by the

General Assembly, as guaranteed to them under the First and Fourteenth Amendments to the United States Constitution.

3. Plaintiffs also allege that provisions of Act 44, as well as the process of its enactment, violate various sections of the Pennsylvania Constitution, several of which are cognate to federal constitutional provisions cited above, to wit:

a. Article I, §11, of the Pennsylvania Constitution, guaranteeing due course of law;

b. Article III, §§1, 2, and 4, of the Pennsylvania Constitution, prescribing the procedure for enactment of legislation consistent with principles of equal protection and due process of law;

c. Article I, §20, of the Pennsylvania Constitution, guaranteeing citizens the right to apply to those invested with the powers of government for any proper purpose by petition, address or remonstrance consistent with principles of freedom of speech;

d. Article II, § 1, of the Pennsylvania Constitution, vesting the legislative authority of the Commonwealth in the General Assembly of Pennsylvania;

e. Article II, § 8, of the Pennsylvania Constitution, prohibiting additional compensation to members of the General Assembly

for service upon a committee or otherwise; prohibiting members from voting for and receiving an increase in their salary during the term for which they were elected; and requiring the salary of members of the General Assembly to be fixed by law.

JURISDICTION

4. Jurisdiction lies in this court under 28 U.S.C. § 1331, providing that district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States.

5. Moreover, jurisdiction lies under 42 U.S.C. §§1983 and 1985 and 28 U.S.C. §1343(a)(3), the jurisdictional counterpart of 42 U.S.C. §§1983 and 1985 as Plaintiffs allege violation of their rights to freedom of speech, due process and equal protection of law guaranteed under the First, Fifth and Fourteenth Amendments to the United States Constitution.

6. Jurisdiction of this court to adjudicate pendent state law claims in this action arises under 28 U.S.C. § 1367(a), is authorized by F.R.Civ.P. 18(a) and is mandatory under the doctrine of supplemental jurisdiction as set forth in United Mine Workers v. Gibbs, 383 U.S. 715 (1966). The pendent state law claims in this action arise out of a common nucleus of operative fact as the federal questions in this Second Amended Complaint,

and the state constitutional claims form part of the same case or controversy.

VENUE

7. Venue is proper in the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. §1391. All of the events and omissions giving rise to Plaintiffs' claims took place in the District.

PARTIES

8. Plaintiff Common Cause of Pennsylvania is a national non-partisan citizen advocacy organization concerned with advancing integrity in government. Common Cause's primary goal is governmental accountability and responsiveness, which it promotes through lobbying, oversight, education, outreach and litigation programs. Common Cause of Pennsylvania is a leader in Pennsylvania on reform of the state budget process, and is actively involved in promoting open records and open public meetings. Common Cause of Pennsylvania has over 10,000 members in Pennsylvania, most if not all of whom pay taxes into the state's general fund. All members of Common Cause of Pennsylvania are entitled to the protections guaranteed under the constitutions of the United States of America and the Commonwealth of Pennsylvania. Common Cause of Pennsylvania is itself a taxpayer into Pennsylvania's general fund.

Common Cause of Pennsylvania has its principal place of business at 300 North 2nd Street, 6th Floor, Harrisburg, Pennsylvania, 17101, in the County of Dauphin.

9. Plaintiff League of Women Voters of Pennsylvania (hereinafter “The League” or “League”) is a membership based, non-partisan, non-profit corporation organized under the laws of Pennsylvania. The League’s purpose is to promote the informed and active participation of citizens in their government. The League was a driving force and a public advocate for the adoption of the current Pennsylvania Constitution. The League’s membership consists of citizens, taxpayers, and voters affiliated with more than forty (40) local chapters throughout Pennsylvania which have historically opposed legislation and procedures designed to circumvent the constitutional process. The League pursues its mission and promotes the interests of its members through public outreach and education, lobbying, and litigation on behalf of more open and accountable government. Most of the League’s members pay taxes into the state’s general fund. The League itself pays taxes into Pennsylvania’s general fund. The League’s principal offices are located at 226 Forster Street, Harrisburg, Pennsylvania, in the County of Dauphin.

10. Plaintiff Greg Vitali is a Member of the Pennsylvania House of Representatives, representing the 166th state legislative district. Greg Vitali voted against Pennsylvania Act 44 of 2005 on July 7, 2005. Greg Vitali is a taxpayer who pays taxes into the state's general fund. Greg Vitali maintains an office at 1001 East Darby Road, Havertown, Pennsylvania, and resides in Havertown, Pennsylvania, in the County of Delaware.

11. Plaintiff Tim Potts is a resident and citizen of the Commonwealth of Pennsylvania. Tim Potts is president of Democracy Rising, an organization dedicated to open and accountable government, as well as, citizen involvement in state government. Tim Potts is a taxpayer who pays taxes into the state's general fund. Tim Potts resides at 18 HarJohn Lane, Carlisle, Pennsylvania, in the County of Cumberland.

12. Plaintiff Carl H. Silverman is a resident and citizen of the Commonwealth of Pennsylvania. Carl H. Silverman is a taxpayer who pays taxes into the state's general fund. Carl H. Silverman resides at 368 Beverly Road, Camp Hill, Pennsylvania, in the County of Cumberland.

13. Plaintiff William R. Koch is a resident and citizen of the Commonwealth of Pennsylvania. William R. Koch is a taxpayer who pays taxes into the state's general fund. William R. Koch resides at 759 Robin Road, Lancaster, Pennsylvania, in the County of Lancaster.

14. Plaintiff H. William McIntyre is a resident and citizen of the Commonwealth of Pennsylvania. H. William McIntyre is a taxpayer who pays taxes into the state's general fund. H. William McIntyre resides at 398 North 17th Street, Camp Hill, Pennsylvania, in the County of Cumberland.

15. Defendant Commonwealth of Pennsylvania is the sovereign with principal offices at The Capitol, Harrisburg, Pennsylvania, 17120, in the County of Dauphin. The Commonwealth of Pennsylvania is made a defendant hereto solely for purposes of adjudicating the pendent state law claims alleged in this Second Amended Complaint and subject to this Court's supplemental jurisdiction.

16. Defendant Edward G. Rendell is Governor of Pennsylvania, and is charged with the faithful execution of the law. His principal office is at Room 225, The Capitol, Harrisburg, Pennsylvania, 17120, in the County of Dauphin. This civil action makes him a party in his personal and official capacity.

17. Defendant Robert P. Casey III is Treasurer of Pennsylvania and is constitutionally charged with responsibility for disbursements from the state treasury. He is made a defendant hereto because of his responsibility for disbursements from the state treasury, which plaintiffs seek to enjoin in the event the Act is reinstated by the state courts. His

principal office is at Room 129, Finance Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin. This civil action makes him a party in his official capacity.

18. Defendant Robert C. Jubelirer is a Member and President *Pro Tempore* of the Pennsylvania Senate, representing the 30th state senatorial district. Robert C. Jubelirer appointed himself and the other majority Senate member to the Senate-House conference committee which drafted the final version of House Bill 1521. He is made a defendant hereto in his individual capacity and his capacity as the leader of the Senate who appointed the two majority members of the Senate-House conference committee which drafted the final version of House Bill 1521, and in his individual capacity as a member of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 292, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

19. Defendant John M. Perzel is a Member and Speaker of the Pennsylvania House of Representatives, representing the 172nd state legislative district. John M. Perzel appointed the two majority House members of the Senate-House conference committee which drafted the final version of House Bill 1521. He is made a defendant hereto in his

individual capacity and his capacity as the Speaker of the House of Representatives who appointed the two majority House members of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 139, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

20. Defendant Robert J. Mellow is a Member and Minority Leader of the Pennsylvania Senate, representing the 22nd state senatorial district. Robert J. Mellow appointed himself as the minority Senate member of the Senate-House conference committee which drafted the final version of House Bill 1521. He is made a defendant hereto in his individual capacity and his capacity as the Minority Leader of the Senate who appointed the minority member of the Senate-House conference committee which drafted the final version of House Bill 1521, and in his individual capacity as a member of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 535, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

21. Defendant H. William DeWeese is a Member and Minority Leader of the Pennsylvania House of Representatives, representing the 50th state legislative district. H. William DeWeese appointed the minority

member of the Senate-House conference committee which drafted the final version of House Bill 1521. He is made a defendant hereto in his individual capacity and his capacity as the Minority Leader of the House of Representatives who appointed the minority member of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 423, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

22. Defendant David J. Brightbill is a Member and Majority Leader of the Pennsylvania Senate, representing the 48th state senatorial district. He is made a defendant hereto in his individual capacity as a member of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 350, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

23. Defendant Samuel H. Smith is a Member and Majority Leader of the Pennsylvania House of Representatives, representing the 66th state legislative district. He is made a defendant hereto in his individual capacity as a member of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 110, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

24. Defendant David G. Argall is a Member and Majority Whip of the Pennsylvania House of Representatives, representing the 124th state legislative district. He is made a defendant hereto in his individual capacity as a member of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 121, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

25. Defendant Michael R. Veon is a Member and Minority Whip of the Pennsylvania House of Representatives, representing the 14th state legislative district. He is made a defendant hereto in his individual capacity as a member of the Senate-House conference committee which drafted the final version of House Bill 1521. His principal office is at Room 428, Main Capitol Building, Harrisburg, Pennsylvania 17120, in the County of Dauphin.

26. Defendant Ralph J. Cappy is the Chief Justice of the Pennsylvania Supreme Court and is made a defendant hereto in his individual and official capacity as Chief Justice of the Pennsylvania Supreme Court. His principal office is at the 31st Floor, Oxford Center, Pittsburgh, Pennsylvania, 15219, in the County of Allegheny.

FACTUAL AND LEGAL ALLEGATIONS

The Context of Judicial/Legislative Negotiation in which These Events Arise

27. In *Pennsylvania State Association of County Commissioners et al., v. Commonwealth of Pennsylvania et. al.*, 545 Pa. 324, 681 A.2d 699 (Pa. 1996), the Supreme Court of Pennsylvania ordered the General Assembly to enact a funding scheme by January 1, 1998, to enforce its mandate for statewide funding of local courts in Pennsylvania, reiterating the Court's ruling in 1987 in *County of Allegheny v. Commonwealth of Pennsylvania*, 517 Pa. 65, 534 A.2d 760 (Pa. 1987) which voided county funding for local courts "as offending the constitutional mandate for a unified [judicial] system..."

28. Until its 1996 decision, the Court had not sought to enforce its 1987 decision, and in fact had declined opportunities to do so. Moreover, the Court had not compelled the General Assembly to comply with its additional mandate in *County of Allegheny* that "appropriate funding legislation" be enacted to implement the change from joint county/state financing of the courts to total statewide funding.

29. Based on information and belief, for nearly a decade the General Assembly ignored the Court's mandate for statewide funding of the

court system. Many members of the General Assembly challenged not only the principle of statewide funding, but also the authority of the Supreme Court to order its implementation.

30. Based on information and belief, many members of the General Assembly balked at the Court's order, based, in part, on the estimated multi-hundred million dollar cost to the General Fund necessary to comply with the Court's order.

31. The opposition to the Court's order was both deep and wide.

32. In this poisoned environment, Plaintiff Common Cause brought its first challenge to legislation as being passed by the General Assembly in violation, in part, of Article III of the Pennsylvania Constitution, "Common Cause I."

33. In Common Cause I, the Commonwealth Court ruled that the legislature passed the 1995-96 budget in an unconstitutional manner and enjoined over 100 expenditures passed in violation of Article III and other provisions of the Pennsylvania Constitution.

34. On June 26, 1996 the Pennsylvania Supreme Court issued a *per curiam* decision affirming the opinion of Commonwealth Court in "Common Cause I."

35. Over the course of the next two years, the General Assembly proceeded to enact additional legislation, including a state budget, in ways that precluded involvement in the legislative process by both the public and the vast majority of legislators, in continued contravention of provisions of Article III of the Pennsylvania Constitution.

36. In response, various plaintiffs, including Common Cause, brought actions in state court challenging the enactment process of such legislation. These challenges included *Common Cause et al., v. Commonwealth et al.*, (hereinafter referred to as “Common Cause II”), concerning the enactment of a gas-tax increase passed and signed into law in a matter of hours in the dead of night – as with the legislation at issue in this case.

37. Based on information and belief, on or about May 5, 1998, Plaintiff Common Cause was informed by Joe Cardiff, an opposition research employee of the House Republican Caucus, that “Common Cause II” was the subject of current negotiations between the courts and the legislature. See “Kauffman Affidavit” at Appendix A.

38. Based on information and belief, on or about June 15, 1999 during a meeting of the House Republican Caucus, then Majority Leader Defendant John Perzel announced that the leadership was moving to the

floor for passage Senate Bill 3 of 1999 whose primary purpose was to have the Commonwealth government assume payment for all court administrators of the Unified Judicial System. See “Krebs Affidavit” at Appendix B

39. Based on information and belief, at the above referenced meeting of the House Republican Caucus, in response to vocal opposition by members of the caucus to state funding of the Unified Judicial System, Defendant John Perzel stated that he did not like the fact that they were now moving forward with this legislation, but it was necessary because there were two issues currently before the Pennsylvania Supreme Court, one concerning workers’ compensation legislation and the other concerning an increase in the state gasoline tax, about which the Republican leadership was very concerned stating that “we can’t afford to lose them.” See “Krebs Affidavit” at Appendix B.

40. Based on information and belief, the two cases referred to at the above-referenced meeting of the House Republican Caucus were *AFL-CIO v. Commonwealth et al.*, and “Common Cause II” both of which challenged legislation as being passed in violation of Article III of the Pennsylvania Constitution. See “Krebs Affidavit” at Appendix B.

41. Based on information and belief, at the above-referenced meeting of the House Republican Caucus, after an uproar among the caucus membership concerned that the action being contemplated was wrong and should not be adopted and that the legislature was being “blackmailed” by the Supreme Court, the then - Speaker of the House, Matthew J. Ryan rose and spoke explaining that the legislative leadership had been “in negotiations” on this subject with the Supreme Court, and that Representative Scott Chadwick had conducted the negotiations on behalf of the Republican House Caucus. After additional statements by members of the caucus to the effect that the legislature should not “give in to blackmail” and should “call the Court’s bluff,” Defendant John Perzel again stated that they had to pass the court funding legislation because “we cannot afford to have the courts rule against us” on the workers’ compensation and gasoline tax legislation. See “Krebs Affidavit” at Appendix B.

42. Based on information and belief, at least two other members of the House Republican Caucus have independently confirmed in significant detail, in private meetings with officials of Plaintiff Common Cause, that the original 1999 “Krebs Affidavit” is true and correct. See

original “1999 Krebs Affidavit” at Appendix C; and, See “Kauffman and Schwenger Affidavits” at Appendix D.

43. The court funding legislation, Senate Bill 3 of 1999, was enacted by the General Assembly and signed into law by the Governor on June 16, 1999.

44. On August 30, 2000 the Pennsylvania Supreme Court ruled in favor of the Commonwealth in both *AFL-CIO v. Commonwealth et. al.*, and “Common Cause II.”

The Origins of the State Court’s Involvement in Negotiating the Act 44

45. Based on information and belief, about a year prior to passage of the Act, the Chief Justice of the Pennsylvania Supreme Court commenced or was convinced to enter into private discussion and/or negotiation with members of the Senate and/or House leadership of the General Assembly and the executive branch to increase the salary of every justice and judge of the Pennsylvania Unified Judicial System established under Article V of the Pennsylvania Constitution.

46. Based on information and belief, the Chief Justice of the Pennsylvania Supreme Court was the architect and chief advocate pegging certain judicial, legislative and executive branch salaries to the salary, or some fraction thereof, of certain designated federal officials.

47. The Associated Press on July 19, 2005 quoted Chief Justice Ralph J. Cappy “[i]t’s not fair for me to be a beneficiary of a very difficult decision, and not fair that I was part of it in terms of presenting it and trying to encourage consideration of it, and then I go run and hide from the press.”

48. Based on information and belief, on August 14, 2005, Senate President *Pro Tempore* Robert Jubelirer, confirmed in an interview with Dave Barger of WRTA radio that the Chief Justice of the Pennsylvania Supreme Court was involved in negotiations with Senator Jubelirer prior to the adoption of the Act.

49. Based on information and belief, all discussion and/or negotiation between the Chief Justice of the Pennsylvania Supreme Court and leaders of the General Assembly and the executive branch to increase the salary of every justice and judge of the Unified Judicial System was conducted in private, without the scrutiny of the media or the public.

50. In drafting key provisions of the Act in secret, the Chief Justice of the Pennsylvania Supreme Court engaged in legislative activity compromising the independence of the Commonwealth’s judicial branch of government.

51. In drafting key provisions of the Act in secret, the Chief Justice of the Pennsylvania Supreme Court exceeded his role as titular head and chief public advocate of the Unified Judicial System.

52. Based on information and belief, no Chief Justice of the United States Supreme Court, in his capacity as Chief Justice, has ever advocated for any legislation, pay raise or otherwise, in any forum other than in either a hearing before a committee or sub-committee of the United States Senate or House of Representatives whose proceedings are recorded and open to the media and public, or in some other forum where his prepared comments are open to the media and public.

53. Based on information and belief, the plan to peg state salaries of the judicial, legislative and executive branches to certain designated federal salaries advocated by the Chief Justice of the Pennsylvania Supreme Court was secretly agreed to by legislative leaders and kept secret until its adoption by a Senate-House conference committee and enactment into law within a few-hour period on July 7, 2005 as part of Act 44.

54. After the Act was passed, the Chief Justice of the Pennsylvania Supreme Court rendered a *de facto* advisory opinion, via public editorial comment, praised the courage of members of the General

Assembly in passing the Act, and denigrated mounting public opposition to the Act as nothing more than “knee jerk reaction.”

55. On August 3, 2005 Suzanne O’Berry, the wife of Michael Long who is the chief of staff to Senate Majority Leader and Defendant Robert Jubelier sent an email to Matthew Brouillette, executive director of the Commonwealth Foundation, regarding passage of the Act, stating “I really want to help kick major ass on this issue in any way I can at all. I watched the formulation of all this up close with my ‘special connections’ to certain offices, and it was much more unsavory than a lot know. Not that that matters now, but I will say that family dining debate has become much more exciting. . . .” See Email at Appendix E.

The Enactment Process

56. The bill which eventually was signed into law as the Act was introduced by Representatives Bunt and Veon on May 3, 2005 as House Bill 1521, Printer’s Number (hereinafter “PN”) 1865, as a 24-line bill prohibiting any member of the executive branch or any board from receiving compensation greater than that paid to the Governor.

57. House Bill 1521, PN 1865, was titled “Relating to Compensation for Executive Branch Officials.”

58. House Bill 1521 was immediately assigned to the House State Government Committee.

59. On June 8, 2005, House Bill 1521, PN-1865, was passed by the House without amendment.

60. On June 13, 2005, House Bill 1521, PN-1865, was assigned to the Senate State Government Committee.

61. On June 30, 2005, House Bill 1521, PN-1865, was passed by the Senate State Government Committee as reported.

62. On July 6, 2005, House Bill 1521, PN-1865, was reported to the Senate Appropriations Committee and amended the bill, now House Bill 1521, PN-2561, into a 27-line bill restricting its application to officials elected or appointed to an executive branch position after November 1, 2006.

63. Later on July 6, 2005, House Bill 1521, PN-2561, was passed by the Senate as amended; the House refused to concur in the Senate amendment; the Senate insisted upon its amendment; the House insisted upon its non-concurrence and a conference committee was appointed consisting of three (3) House and three (3) Senate members.

64. The conference committee was composed of Senate President *Pro Tempore* Robert C. Jubelirer; Senate Majority Leader David

J. Brightbill; Senate Minority Leader Robert J. Mellow; House Majority Leader Samuel H. Smith; House Majority Whip David G. Argall; and House Minority Whip Michael R. Veon.

65. At approximately 2:00 a.m. on July 7, 2005, House Bill 1521 is amended by the conference committee, now PN-2570, and changed from a 24-line into a 22 page bill, providing for massive increases of up to 54% in the salary of every justice and judge of the Pennsylvania Unified Judicial System, every member of the General Assembly, and senior members of the executive branch including the Governor and members of his Cabinet.

66. House Bill 1521, PN-2570, was so amended by the conference committee that the original, and exclusive, subject matter of House Bill 1521, in all eight of its floor and committee considerations, as PN-1865 and PN-2561, was deleted in its entirety from the bill.

67. The original and exclusive subject matter of HB 1521 – limiting the compensation of executive branch officials – was replaced by historic increases in the salary of members of all three branches of state government.

68. House Bill 1521 as originally introduced amended one Title of the Pennsylvania Consolidated Statutes; House Bill 1521 as reported out of

the Senate-House conference committee amended three Titles of the Pennsylvania Consolidated Statutes.

69. Several minutes after being reported out of the conference committee, House Bill 1521, PN-2570, was presented to the Senate and House under a rule prohibiting any amendment to the bill.

70. This was the only public consideration of, and the only opportunity for 247 of the General Assembly's 253 Members to vote on *any* provision in House Bill 1521 as enacted.

71. On vote for final passage, 247 of the General Assembly's 253 Members were prohibited from changing a single word, jot or title of House Bill 1521.

72. The vast majority of the General Assembly's 253 Members were given little or no warning of the pendency of this measure's new subject matter and little or no time to actually read or vote on the legislation with circumspection.

73. House Bill 1521, PN-2570, was passed by the House on a vote of 119-79.

74. Moments later, House Bill 1521, PN-2570, was passed by the Senate on a vote of 27-23.

75. A few hours later, the Governor signed House Bill 1521, PN-2570, into law as the Act.

76. Act 44 became law literally in the dead of night, with no public warning and practically no public discussion, certainly not the public and legislative debate mandated by the Pennsylvania Constitution.

77. Act 44 was repealed by the General Assembly on November 16, 2005.

78. The repeal of Act 44 did not require repayment of any salary or “unvouchered expenses” dispersed under the Act.

The Exclusion of Most Legislators and Their Constituents from the Legislative Process

79. The text of the Act was drafted in its entirety by the six members of the Senate-House conference committee appointed by the President *Pro Tempore* of the Senate and the Speaker of the House of Representatives (hereinafter “Leaders of the General Assembly” or the “Leaders”).

80. The text of the Act is not germane to the original purpose of House Bill 1521 to limit the compensation of executive branch officials.

81. The proper purpose of a Senate-House conference committee is to negotiate differences in the text of a bill previously considered and

subjected to the constitutionally-mandated legislative process toward agreement by both chambers on a single text of the bill to allow members of both chambers of the General Assembly to conclude the legislative process by way of a final vote of the Senate and House to either accept or reject the bill.

82. House Bill 1521 was so amended by the Senate-House conference committee as to constitute a new bill requiring it to be submitted to the entire legislative process mandated by Article III, §§ 1, 2 & 4, of the Pennsylvania Constitution before enactment into law as the Act.

83. Not one single provision of the Act was subjected to the constitutionally-mandated requirement of two hearings, six floor considerations and two further votes on acceding to the other chamber's version of the bill.

84. Authority to appoint members of a conference committee is vested in the Leaders of the General Assembly, one of whom, the President *Pro Tempore* of the Senate, was appointed to the conference committee that drafted Act 44.

85. The Leaders' authority, even when exercised pursuant to Rule, to appoint members of a conference committee does not vest power

in the Leaders intentionally to circumvent the legislative process mandated by the Pennsylvania Constitution.

86. The legislative process mandated by Article III, §§ 1, 2 & 4, of the Pennsylvania Constitution distributes authority to participate in the legislative process equally among the elected representatives of all citizens of the Commonwealth.

87. The Leaders intentionally transformed House Bill 1521 in the penultimate stage of the legislative process into a Trojan Horse designed to impose their text of the Act on the General Assembly and the citizens of Pennsylvania without going through the extensive and deliberate process of public notice, debate, and amendment as required by Article III, §§ 1, 2 & 4, of the Pennsylvania Constitution.

88. The Leaders have intentionally transformed the Senate-House conference committee on major legislation, such as the Act, into a “super-legislature” absorbing the power of the full legislature denying the elected representatives of Plaintiffs and the vast majority of the Commonwealth’s citizens without their full and equal constitutional authority to participate in the legislative process mandated by the Pennsylvania Constitution.

89. The Leaders have intentionally disenfranchised Plaintiffs and the vast majority of the citizens of the Commonwealth as a class, of their

right to elect representatives with full and equal constitutional authority to participate in the legislative process mandated by Article III, §§ 1, 2 & 4, of the Pennsylvania Constitution.

90. The enactment process of Act 44 intentionally denied Plaintiffs, and the vast majority of similarly situated citizens of the Commonwealth, representation in the legislative process of state government equal to the representation of similarly situated citizens represented by the Leaders.

Restriction of First Amendment Free Speech

91. The truncated legislative process used by the Leaders to enact Act 44, and the early morning hour at which it was triggered, intentionally inhibited Plaintiffs ability to receive timely information regarding proposed government actions necessary to exercise their First Amendment right of free speech to support or oppose the Senate-House conference committee's new version of House Bill 1521 before it was enacted by the General Assembly into law.

92. The Leaders intentionally deprived Plaintiffs, and the entire Pennsylvania electorate, of any notice of the text of House Bill 1521, PN 2570, before it was enacted into law by a legislative process lasting a few hours in the very early morning of July 7, 2005.

93. The improper legislative process used by the Leaders to enact Act 44 had the intended effect of inhibiting Plaintiffs' political speech to oppose passage of the conference committee's version of House Bill 1521 in order to amplify their relative political voice and to permit their unopposed effort to lobby members of the General Assembly for the enactment of House Bill 1521, PN 2570, into law as the Act.

94. Based on information and belief, the improper legislative process used by the Leaders to enact Act 44 was intended to prevent and delay the public expression of anger and outrage exhibited subsequent to the Act's passage until after House Bill 1521 was passed by the Senate and House and signed into law by the Governor; the Leaders thereby prevented such speech from interfering with their effort to secure the votes necessary for House Bill 1521 to be enacted into law.

95. Based on information and belief, after the media reported on the substantive provisions of Act 44, over 132,000 Pennsylvania citizens have signed petitions expressing their opposition to the Act.

96. The enactment process used by the Leaders to enact Act 44 was not narrowly tailored to serve an overriding state interest necessary to protect Plaintiffs' right to free political speech as guaranteed under the First and Fourteenth Amendment to the United States Constitution.

The Legislative Salary Increase - Section Two of the Act

97. Section 2 of the Act amends Title 46 of the Pennsylvania Consolidated Statutes by adding a “Part II” and Chapters 11 and 13.

Objectionable Substantive Provisions of the Act

I. Additional Salary for Service Upon a Committee and Leadership.

98. Section 1103(a) of Title 46 establishes salary for Senate committee chairmen and vice-chairmen and Senate officers and leaders above the salary set for rank and file members under Section 1102(a) of Title 46 of the Act.

99. The additional salary established under Section 1103(a) of Title 46 is solely for service upon a committee or for leadership service in the Senate.

100. Section 1103(b) of Title 46 establishes salary for committee chairmen and vice-chairmen and officers and leaders of the House of Representatives (hereinafter referred to as the “House”) above the salary set for rank and file members of the House established under Section 1102(b) of Title 46 of the Act.

101. The additional salary established under Section 1103(b) of Title 46 is solely for service upon a committee or for leadership service in the House.

II. Delegation of the Legislative Authority of the Commonwealth to the United States Congress.

102. Section 1101 of Title 46 defines “base salary” as the salary for the designated federal official as of January 2005.

103. Section 1102(a) of Title 46 establishes the annual salary for a member of the Senate at 50% of the base salary of a member of the United States House of Representatives, plus all adjustments provided under Section 1104 of Title 46.

104. Section 1102(b) of Title 46 establishes the annual salary for a member of the House at 50% of the base salary of a member of the United States House of Representatives, plus all adjustments provided under Section 1104 of Title 46.

105. Section 1104 of Title 46 provides automatic cost of living increases on December 1 of each year for all members of the General Assembly, including legislative officers and leaders.

106. Section 1104(a)(1) of Title 46 provides that the cost of living increase for members of the General Assembly is the greater of an increase in the salary for the designated Federal official (namely the salary for members of the United States House of Representatives) or the percentage change in the Consumer Price Index for All Urban Consumers

(hereinafter referred to as the “CPI-U”), for the Pennsylvania, New Jersey, Delaware and Maryland area for the most recent 12-month period for which figures have been officially reported by the United States Department of Labor, Bureau of Labor Statistics.

III. The Mid-Term Legislative Salary Increase and the “Unvouchered Expense” Allowance.

107. Section 1107(a) of Title 46 provides that beginning on the effective date of Chapter 11 of Title 46, a member of the Senate shall receive monthly, in addition to any allocation for clerical assistance and other actual expenses, an “unvouchered expense” allowance in the amount of 1/12 of the difference between their previous salary calculated under the Act of September 30, 1983 (P.L.160, No. 39), known as the Public Official Compensation Law, and the amount authorized to the member under either Section 1102(a) or 1103(a) of Title 46 (plus all adjustments under Section 1104 of Title 46 relating to cost of living increases).

108. The monthly “unvouchered expense” allowance under Section 1107(a) of Title 46 – defined as and exactly equal to the monthly salary increase enacted in Sections 1102(a) and 1103(a) of the Act - ranges from \$950 for a rank and file member of the Senate up to about \$3,069 for the President *Pro Tempore* of the Senate.

109. The “unvouchered expense” allowance under Section 1107(a) of Title 46 expires on November 30, 2008.

110. Salary increases for all current members of the Senate are not permitted under Article II, §8, of the Pennsylvania Constitution until December 1, 2006.

111. December 1, 2008 is the first day on which event current Member of the Senate will be eligible, if re-elected, to receive a higher salary for their new term of office. Half of the membership of the Senate once re-elected, are eligible for salary increases under Article II, §8 of the Pennsylvania Constitution on December 1, 2006.

112. Section 1107(b) of Title 46 provides that beginning on the effective date of Chapter 11 of Title 46, a member of the House shall receive monthly, in addition to any allocation for clerical assistance and other actual expenses, an “unvouchered expense” allowance in the amount of 1/12 of the difference between their previous salary calculated under the Act of September 30, 1983 (P.L. 160, No. 39), known as the Public Official Compensation Law, and the amount authorized to the member under either Section 1102(b) or 1103(b) of Title 46 (plus all adjustments under Section 1104 of Title 46 relating to cost of living increases).

113. The monthly “unvouchered expense” allowance under Section 1107(b) of Title 46 – defined as and exactly equal to the monthly salary increase enacted in Sections 1102(b) and 1103(b) of the Act - ranges from \$950 for a rank and file member of the House up to about \$3,069 for the Speaker of the House.

114. The “unvouchered expense” allowance under Section 1107(b) of Title 46 expires on November 30, 2006.

115. Salary increases for current Members of the House are not permitted under Article II, §8, of the Pennsylvania Constitution until December 1, 2006.

116. December 1, 2006 is the first day on which any current Member of the House will be eligible, if re-elected, to receive a higher salary for their new term of office.

117. Based of information and belief, the term “unvouchered expense” allowance authorized under Sections 1107(a) and 1107(b) of Title 46 is not defined by Act 44 or any other enactment of the General Assembly.

118. The Act provides no legislative findings of fact stating any legislative expenses the “unvouchered expense” allowance is intended to reimburse members of the General Assembly.

119. The Act provides no legislative findings of fact stating any anticipated increase in expenses not covered by other reimbursements to Members of the General Assembly by other enactments or appropriations.

120. The “unvouchered expense” allowance is not intended to reimburse, nor in fact does it reimburse, any actual expenses.

121. The “unvouchered expense” allowance authorized under the Act bear no reasonable relationship to any legitimate governmental goal.

122. The “unvouchered expense” allowance authorized under the Act is excessive and is not reasonably related to any unsatisfied legislative expense incurred by Members of the Senate or House.

123. The “unvouchered expense” allowance authorized under the Act is salary, given a different name in the Act solely to circumvent provisions of Article II, §8, of the Pennsylvania Constitution.

124. The “unvouchered expense” allowance authorized under the Act is a sham for an unlawful salary increase for Members of the Senate and House during the same term of office in which the Act was approved, in violation of Article II, §8, of the Pennsylvania Constitution.

125. Members of the General Assembly are provided a pension upon retirement after having served a minimum of ten years in the General Assembly.

126. The pension of a retired Member of the General Assembly is calculated, in part, by the three highest salary years of that Member for service in the General Assembly.

127. Based on information and belief, for purposes of calculating a former Member's retirement pension, legislative expenses disbursed to a Member are not included in determining that Member's three highest salary years while serving in the General Assembly.

128. Based on information and belief, the "unvouchered expense" allowance authorized under Sections 1107(a) and 1107(b) of Title 46 of the Act, however, is included in the determination of a Member's salary while serving in the General Assembly for purposes of calculating a Member's retirement pension.

129. Based on information and belief, Members of the Senate and House accepting the "unvouchered expense" allowance under Title 46 who retire within the next three years will receive higher annual pensions than Members of the Senate or House retiring within the next three years who refused to accept the "unvouchered expense" allowance authorized under Sections 1107(a) and 1107(b) of Title 46.

130. On August 18, 2005, as reported by the Associated Press, Chief Counsel for the Senate Republican Caucus, Steve MacNett,

confirmed that Senate members who accept the “unvouchered expense” allowance are not eligible for the next automatic cost of living increase in their salary scheduled to take effect on December 1, 2005.

131. The state government and the General Assembly itself treat the “unvouchered expense” allowance as salary in fact.

The Non-Severability Clause and Violation of Due Process of Law

132. Section 6 of the Act provides that provisions of the Act are nonseverable and if any provision of the Act or its application to any person or circumstance is held invalid, the remaining provisions or applications of the Act are void.

133. Under Section 1 of the Act, every justice and judge of the Unified Judicial System receives a substantial increase in his or her salary.

134. Each Judge of the Pennsylvania Commonwealth Court, the state court of original jurisdiction to review alleged violations of the Pennsylvania Constitution under 42 Pa.C.S. §761(a)(1), is entitled to a salary increase under the Act which would be voided if *any* provision of the Act, or the process of its enactment, were ruled unlawful, and, therefore, would have a direct and actual pecuniary interest in ruling against every procedural and substantive claim alleged and remedy sought by Plaintiffs in this Complaint or by any litigant in state court.

135. Each Justice of the Pennsylvania Supreme Court - the state court vested with exclusive and final jurisdiction over a direct appeal made by Plaintiffs from an adverse decision of the Commonwealth Court in this civil action pursuant to Article V, § 9, of the Pennsylvania Constitution, Section 723 of the Judicial Code, 42 Pa. C.S.A §723, and Rule 1101 of the Pennsylvania Rules of Appellate Procedure - is entitled to a salary increase under the Act and, therefore, would have a direct and actual pecuniary interest in ruling against every procedural and substantive claim alleged and remedy sought by Plaintiffs in this Complaint or by any litigant in state court.

136. Based on information and belief, in enacting Act 44 the Commonwealth government intentionally created a financial conflict for state court judges to ensure they would not deviate from the negotiated goal of upholding salary increases for all three branches of state government.

Cognizable Harm is Not Speculative and Has Already Occurred Under the Act.

137. Section 7 of the Act provides the Act has immediate effect.

138. The first payments under the Act were made on August 1, 2005 in the form of unvouchered expenses to certain members of the

Senate and House who elected in favor of, or failed to opt out of, accepting such payments.

139. Additional payments under the Act are scheduled to be disbursed on the first day of each month.

140. Plaintiffs' have no adequate remedy at law.

CAUSES OF ACTION

COUNT I

Conspiracy To Violate Civil Rights

141. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 140 of this Second Amended Complaint as if fully set forth herein.

142. Based on information and belief, Defendants John Perzel and Robert Jubelirer and named, unknown members of the Pennsylvania Supreme Court to be later named as Defendants, acting at all times under color of state law, illegally negotiated legislative outcomes desired by named, known and unknown members of the Pennsylvania Supreme Court in exchange for decisions by the Pennsylvania Supreme Court desired by legislative Defendants and authorizing them to enact legislation in violation of the express text of Article III of the Pennsylvania Constitution.

143. These negotiations and agreements deny Plaintiffs' rights of (1) due process of law under the Fifth and Fourteenth Amendments to the United States Constitution; (2) equal protection of the law under the Fifth Amendment to the United States Constitution; and (3) freedom of speech under the First Amendment to the United States Constitution, as more fully described in the preceding paragraphs, all in violation of 42 U.S.C. §§ 1983 and 1985, for which the individual Defendants are individually liable.

COUNT II

Violation of Due Process by Non-Severability Clause

144. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 143 of this Second Amended Complaint as if fully set forth herein.

145. Defendants, acting at all times under color of state law, enacted Section 6 of Act 44 denying Plaintiffs' right guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution to a fair hearing before an impartial tribunal, as more fully described in the preceding paragraphs, all in violation of 42 U.S.C. §1983, for which the individual Defendants are individually liable.

COUNT III

Violation of Due Process of Law by Judicial Participation in the

Legislative Process

146. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 145 of this Second Amended Complaint as if fully set forth herein.

147. Defendants, acting at all times under color of state law, engaged in private conversations on legislative matters with one or more justices of the Pennsylvania Supreme Court that might come before the court thereby denying Plaintiffs' right to due process of the law under the Fifth and Fourteenth Amendments to the United States Constitution, as more fully described in the preceding paragraphs, all in violation of 42 U.S.C. §1983, for which the individual defendants are individually liable.

COUNT IV

Violation of Equal Protection and Due Process of Law

148. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 147 of this Second Amended Complaint as if fully set forth herein.

149. Defendants, acting at all times under color of state law, implemented a truncated legislative process, as part of a continuing pattern of illegal statutory enactment thereby denying Plaintiffs' right to equal

protection and due process of the law under the Fifth and Fourteenth Amendments to the United States Constitution, as more fully described in the preceding paragraphs, all in violation of 42 U.S.C. §1983, for which the individual Defendants are individually liable.

COUNT V

Violation of First Amendment Rights

150. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 149 of this Second Amended Complaint as if fully set forth herein.

151. Defendants, acting at all times under color of state law, implemented the legislative process used to enact Act 44, as part of a continuing pattern of illegal statutory enactment, thereby depriving Plaintiffs' their right to freedom of speech to lobby their elected state representatives concerning passage of House Bill 1521 before it was enacted into law as Act 44, as guaranteed by the First and Fourteenth Amendments to the United States Constitution, as more fully described in the preceding paragraphs, all in violation of 42 U.S.C. §1983, for which the individual Defendants are individually liable.

PENDENT STATE CLAIMS

COUNT VI

**Violation of Due Course of Law Under Article I, §11 of the
Pennsylvania Constitution**

152. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 151 of this Second Amended Complaint as if fully set forth herein.

153. Section 6 of the Act deprives Plaintiffs of their right to a fair hearing before an impartial tribunal, as more fully described in the preceding paragraphs, in violation of due course of law as guaranteed to Plaintiffs under Article I, §11, of the Pennsylvania Constitution.

COUNT VII

Violation of Article I, §20 of the Pennsylvania Constitution

154. Plaintiffs incorporate by reference the allegations of paragraph 1 through 153 of this Second Amended Complaint as if fully set forth herein.

155. The legislative process of enactment of Act 44 violated Plaintiffs' right to petition and address elected members of the General Assembly prior to passage of the Act, as more fully described in the preceding paragraphs, in violation of Article I, §20, of the Pennsylvania Constitution.

COUNT VIII

Violation of Article III, §1 of the Pennsylvania Constitution

156. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 155 of this Second Amended Complaint as if fully set forth herein.

157. House Bill 1521 was so altered and amended, on its passage through the General Assembly, so as to change the original purpose of the bill, as more fully described in the preceding paragraphs, in violation of Article III, §1, of the Pennsylvania Constitution.

COUNT IX

Violation of Article III, §2 of the Pennsylvania Constitution

158. Plaintiffs incorporate by reference the allegations of paragraph 1 through 157 of this Second Amended Complaint as if fully set forth herein.

159. House Bill 1521 was not referred to committee in either chamber of the General Assembly after its original purpose was changed by the Senate-House conference committee, as more fully described in the preceding paragraphs, in violation of Article III, §2, of the Pennsylvania Constitution.

COUNT X

Violation of Article III, §4 of the Pennsylvania Constitution

160. Plaintiffs incorporate by reference the allegations of paragraph 1 through 159 of this Second Amended Complaint as if fully set forth herein.

161. House Bill 1521 was not considered on three days in either chamber of the General Assembly after the original purpose of the bill was changed by the Senate-House conference committee, as more fully described in the preceding paragraphs, in violation of Article III, §4, of the Pennsylvania Constitution.

COUNT XI

Violation of Article II, §8 of the Pennsylvania Constitution – Prohibition Against Additional Compensation for Service Upon a Committee, or Otherwise

162. Plaintiffs incorporate by reference the allegations of paragraph 1 through 161 of this Second Amended Complaint as if fully set forth herein.

163. Sections 1103(a) and 1103(b) of Title 46 of the Act establish additional salary for service upon a legislative committee and positions of leadership within the General Assembly, as more fully described in the preceding paragraphs, in violation of Article II, §8, of the Pennsylvania Constitution.

COUNT XII

Violation of Article II, §8 of the Pennsylvania Constitution –

Prohibition Against Mid-Term Legislative Salary Increases

164. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 163 of this Second Amended Complaint as if fully set forth herein.

165. Payment to members of the General Assembly of the “unvouchered expense” allowance established by Sections 1107(a) and 1107(b) of Title 46 of the Act constitute a salary increase during the term in which the Act was passed, as more fully described in the preceding paragraphs, in violation of Article II, §8, of the Pennsylvania Constitution.

COUNT XIII

Violation of Article II, §8 of the Pennsylvania Constitution -

Requirement that Legislative Salaries be Fixed by State Law

166. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 165 of this Second Amended Complaint as if fully set forth herein.

167. The annual cost of living increases authorized by Section 1104 of Title 46 of the Act enter into force without the legislative

concurrence of both chambers of the General Assembly and presentment to and signature by the Governor.

168. The annual cost of living increase authorized by Section 1104 of Title 46 of the Act is a variable-rate salary, increasing over time and triggered by events external the Act and state law.

169. Accordingly, the Act violates Article II, §8, requiring that the salary of Members of the General Assembly shall be fixed by state law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Honorable Court: After final hearing enter judgment in favor of Plaintiffs and against Defendants in the following particulars:

(a) Enjoin the Pennsylvania Supreme Court from citing or relying on *AFL-CIO et al., v. Commonwealth et al.*, and *Common Cause et al., v. Commonwealth et al.*, and any decision citing them therein as precedent in future cases challenging legislation as being enacted in violation of Article III of the Pennsylvania Constitution;

(b) Declare that the Act is invalid and without any force or effect;

(c) Declare that the process by which the Act was enacted violated the United States Constitution;

(d) Declare that the Act itself violates the United States Constitution;

(e) Declare that private conversations on legislative matters that might come before the Pennsylvania Courts between members of the judicial and other branches of state government violate both state and federal constitutions;

(f) Enjoin Defendants from enforcing provisions of the Act;

(g) Permanently enjoin Defendants, and their successors in office from enacting further legislation in violation of Article III of the Pennsylvania Constitution and by similar means that deprive citizens of their rights to equal protection and due process;

(h) Permanently enjoin Defendants, and their successors in office from enacting further legislation in violation of Article III of the Pennsylvania Constitution and by similar means that inhibit and deprive citizens of their right to freedom of political speech;

(i) Assessing the costs of this action and Plaintiffs' legal fees against Defendants pursuant to 42 U.S.C. §1988; and

(j) Granting such other and further relief as to this Second Amended Complaint as shall appear just and proper.

Respectfully submitted,

Dated: February 6, 2006

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