

CENTER for JUDICIAL ACCOUNTABILITY, INC.

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March 4, 2014

TO: “The Appropriate Committees of the Legislature”:

Senate Judiciary Committee

Chair: Senator John J. Bonacic

Ranking Member: Senator Ruth Hassell-Thompson

Assembly Judiciary Committee

Chair: Assemblywoman Helene E. Weinstein

Ranking Member: Michael Montesano

Senate Committee on Investigations and Government Operations

Chair: Senator Carl Marcellino

Ranking Member: Senator Brad Hoylman

Assembly Committee on Governmental Operations

Chair: Assemblyman Steve Englebright

Ranking Member: Assemblywoman Janet L. Duprey

Assembly Committee on Oversight, Analysis and Investigation

Chair: Assemblyman Andrew Hevesi

Ranking Member: Assemblyman Michael Montesano

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Your Constitutional Duty:

(1) to address the evidence of fraud and unconstitutionality in the proposed Judiciary and Legislative budgets – and in the materially-divergent Governor’s Budget Bill #S.6351/A.8551, which, in violation of Senate and Assembly Rules, is unsupported by a fiscal note and introducer’s memorandum;

(2) to address the \$270,000 and other appropriations, embedded in the Executive budget, for a demonstrably corrupt Commission to Investigate Public Corruption.

As you know from our many prior letters and e-mails to you and phone calls to your office staff,¹ your committees possess more specialized jurisdiction and oversight over the Judiciary and Legislative budgets than the generic Senate Finance Committee and Assembly Ways and Means Committee.

To the extent you were deferring to the Senate Finance Committee and Assembly Ways and Means Committee to oversee and scrutinize the Judiciary and Legislative budgets – and the Governor’s

¹ These letters and e-mails are posted on our website, www.judgewatch.org, accessible via our prominent homepage hyperlink “CJA Leads the Way to NYS Budget Reform...”.

Budget Bill #S.6351/A.8551, purportedly based thereon, that was a mistake. Their Chairs and Ranking Members have engaged in the most wilful misfeasance and nonfeasance, holding no hearing whatever on the Legislature’s proposed budget and holding a sham and rigged hearing on the Judiciary’s proposed budget as part of their February 5, 2014 budget hearing on “public protection”. This is particularized by our February 21, 2014 letter to them – a copy of which is enclosed, together with its most important enclosure – our “Questions for Chief Administrative Judge Prudenti”.

Upon your reading the February 21, 2014 letter, please advise what steps your important legislative committees will be taking to safeguard the public purse and interest – and not only as to the Legislative and Judiciary budgets, but as to the \$270,000 and other appropriations embedded in the Executive budget for a demonstrably corrupt Commission to Investigate Public Corruption, as to which no hearing has been held.

As our February 21, 2014 letter points out (at p. 11), the Governor’s Budget Bill #S.6351/A.8551 (“Legislature and Judiciary Budget”) cannot be voted out of the Senate Finance Committee and Assembly Ways and Means Committee because it lacks the fiscal notes and introducer’s memoranda required by Senate Rule VII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f).

Such reinforces that the Senate and Assembly Judiciary Committees should be holding hearings on the judiciary portion of that bill – and that the Senate Committee on Investigations and Government Operations, the Assembly Committee on Governmental Operations, and the Assembly Committee on Oversight, Analysis and Investigation should be holding hearings on its legislative portion. Certainly, you can readily schedule committee meetings and put our February 21, 2014 letter on the agenda – together with our dispositive December 11 and December 30, 2013 letters and subsequent correspondence based thereon. Or do you believe that the rank and file members of your committees should not be informed of what we alerted you to as early as three months ago?

As will be immediately obvious upon your reading our enclosed “Questions for Chief Administrative Judge Prudenti”, these are the very types of questions any competent, unconflicted legislative committee with oversight over the Judiciary and its budget would require Chief Administrative Judge Prudenti to answer. If you will not schedule committee hearings to get her live answers, what is your excuse for not forwarding her the questions for her written answers?

By this letter, we request that individually, if not collectively, you promptly forward our “Questions for Chief Administrative Judge Prudenti” to her for response so that, by the time your committees next meet, you will have her written answers for your rank and file committee members to review and discuss.

By the same token, if you will not schedule committee hearings on the legislative portion of the Governor’s Budget Bill #S.6351A/8551, taking live testimony from Temporary Senate President Skelos and Assembly Speaker Silver regarding the particulars of our December 30, 2013 letter – a copy of which we expressly furnished them for response (at p. 7) – we request that you request that they answer written questions based on that and subsequent letters, including as to the out-of-sequence section at the back of the Governor’s Budget Bill #S.6351/A.8551 (pp. 27-46), which adds

19 pages of legislative reappropriations, totaling countless millions of dollars, that were not part of their November 27, 2013 budget submission to the Governor. To assist you, we enclose “Questions for Temporary Senate President Skelos and Assembly Speaker Silver” for you to forward them for response.

Of course, with respect to the Legislature’s budget, you – like Temporary Senate President Skelos and Assembly Speaker Silver and like the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee – have still not identified the overarching question presented by our December 30, 2013 letter:

“the process, if any, by which the Legislature determines its ‘itemized estimates’ of its ‘financial needs’ – and the role therein or rank-and-file legislators and the legislative committees” (at p. 7, underlining in the original).

Such question was reiterated by my January 14, 2014 letter requesting to testify in opposition to the Legislative and Judiciary budgets. The conclusion of that letter, containing an analysis of Article VII, §1 of the New York State Constitution and a records request to the Secretary of the Senate and Assembly Public Information Office, was as follows:

“So that my testimony in opposition to the Legislature’s proposed budget for fiscal year 2014-2015 may be informed by facts, not suppositions, I request that ‘the appropriate committees of the legislature’ having primary jurisdiction over the Legislature’s proposed budget – the Senate Committee on Investigations and Government Operations and the Assembly Committee on Governmental Operations – identify the process by which the Legislature’s proposed budget for fiscal year 2014-2015 was compiled. If the Senate Finance Committee or Assembly Ways and Means Committee – having more general jurisdiction – can answer that question, or if the question can be answered by the supervisory Assembly Committee on Oversight, Analysis, and Investigation, I request that they do so. Indeed, *it should be obvious that the reason Article VII, §1 requires that the Judiciary’s ‘certified’ ‘itemized estimates’ of its ‘financial needs’ be transmitted to ‘the appropriate committees of the legislature’, in addition to the Governor, but does not require that the Legislature’s ‘certified’ ‘itemized estimates’ of its ‘financial needs’ be transmitted to ‘the appropriate committees of the legislature’, is because ‘the appropriate committees of the legislature’ are presumed to have formulated the ‘itemized estimates’ that the ‘presiding officer of each house’ have ‘certified’.*

Needless to say, absent your answer as to the process underlying the Legislature’s proposed budget for fiscal year 2014-2015, Temporary Senate President Skelos and Assembly Speaker Silver must be called upon to furnish it, publicly, at the Legislature’s joint budget hearings. In any event, they or their designated representatives should be expected to testify and answer questions about the Legislature’s proposed budget, just as the Chief Administrative Judge will be testifying and answering questions about the Judiciary’s proposed budget.

Pursuant to Senate Rule XV, ‘Freedom of Information’, and Assembly Rule VIII, ‘Public Access to Records’, I request all records delineating the process, if any, by which the proposed Legislative budget for fiscal year 2014-2015 was compiled. For such purpose, a copy of this letter is being furnished to the Secretary of the Senate and Assembly Public Information Office.” (pp. 2-3, underlining in the original, italics added).

The answer that came back from the Secretary of the Senate was “the records you request, if the records even exist, are not subject to disclosure pursuant to Senate Rules”. The Assembly’s Records Access Officer replied: “the Assembly maintains no records describing the process by which the Legislative Budget for fiscal year 2014-15 was compiled”.

Thereafter, upon requesting records pertaining to the mysterious legislative reappropriations at the back of the Governor’s Budget Bill #S.6351/A.8551, the Secretary of the Senate similarly stated “if the records even exist, [they] are not subject to disclosure pursuant to Senate Rules”. The Assembly Records Access Officer also similarly stated “The Assembly maintains no record responsive to this request.” No response whatever from the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee.

You can see for yourself the astonishing results of our FOIL and records requests pertaining to the Legislature’s proposed budget, the Judiciary’s proposed budget, and the Governor’s Budget Bill #S.6351/A.8551, as they are posted on their own webpage of our website, www.judgewatch.org, -- the link for which is posted on the webpage for this letter. Indeed, the webpage for this letter, <http://www.judgewatch.org/web-pages/searching-nys/budget-2014-2015/march-4-letter.htm>, furnishes links to all the substantiating evidence herein referred to.

Finally, with respect to the \$270,000 and other appropriations for the Commission to Investigate Public Corruption, embedded in the Executive budget, as to which – and in face of our February 3, 2014 telephone and e-mail request to testify in opposition – no legislative budget hearing has been held, any competent, properly functioning Legislature – which the New York Legislature is categorically not – would recognize the incongruity in authorizing any appropriations for the Commission to Investigate Public Corruption while, simultaneously, suing it in a declaratory action whose fourth cause of action² states, in pertinent part:

² The declaratory action, pending in Supreme Court/New York County, under index #160941/2013, is entitled:

“NEW YORK STATE SENATE, NEW YORK STATE ASSEMBLY, DEAN G. SKELOS and JEFFREY D. KLEIN, as members and as Temporary Presidents of the New York State Senate, and SHELDON SILVER, as member and as Speaker of the New York State Assembly v. KATHLEEN RICE, WILLIAM J. FITZPATRICK and MILTON L. WILLIAMS, Jr., in their official capacities as Co-Chairs of the Moreland Commission on Public Corruption, and THE MORELAND COMMISSION TO INVESTIGATE PUBLIC CORRUPTION”.

“The Legislature has not provided funding for the Commission’s investigation, and therefore its investigation has caused, is now causing, or is about to cause wrongful expenditure, misappropriations, misapplications, and other illegal or unconstitutional disbursement of state funds or state property.” (complaint, ¶83)

and whose “WHEREFORE” clause seeks a court order to:

“(5) declare that the Commission in the course of its investigation has caused, is now causing, or is about to cause wrongful expenditures, misappropriations, misapplications or other illegal or unconstitutional disbursement of state funds and/or state property;

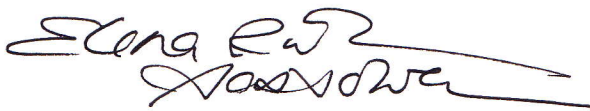
(6) permanently enjoin the Commission from any further expenditure, appropriation or disbursement of state funds and/or state property in its exercise of powers under N.Y. Executive Law §63(8).” (complaint, at p. 27).

Indeed, for the Legislature to appropriate monies for the Commission to Investigate Public Corruption in the budget for fiscal year 2014-2015 would doubtless be deemed a waiver of its fourth cause of action and corresponding injunction request.

As time is of the essence – with Wednesday, March 12, 2014 being the date scheduled by Senate Coalition Leaders Skelos and Klein and Assembly Speaker Silver for “Senate & Assembly budget actions” and commencement of “Joint Senate & Assembly budget conference committees” – please let us hear from you by Friday, March 7, 2014, as to whether, at very least, you will be forwarding our enclosed “Questions for Chief Administrative Judge Prudenti” and our “Questions for Temporary Senate President Skelos and Assembly Speaker Silver” to them for response.

As always, I would welcome the opportunity to meet with you to discuss the foregoing – and to answer questions, including under oath.

Thank you.



Enclosures & cc’s: see next page

The complaint’s Fourth Cause of Action (at pp. 23-24) is:

“For a Declaration Pursuant To State Finance Law §123-e That The Commission Has Caused, Is Now Causing, Or Is About To Cause A Wrongful Expenditure, Misappropriation, Misapplication Or Other Illegal Or Unconstitutional Disbursement Of State Funds And State Property In its Exercise of Powers Under N.Y. Executive Law §63(8).

A link to the filed record of the case – as well as links to the filed records of the related cases in which the Legislature has moved to intervene to challenge the lawfulness of the Commission’s subpoenas – is posted on our webpage for this letter.

Enclosures: (1) CJA’s February 21, 2014 letter –
with its “Questions for Chief Administrative Judge Prudenti”;
(2) “Questions for Senate President Skelos and Assembly Speaker Silver”

cc: Senate Finance Committee Leadership
Chair John A. DeFrancisco
Ranking Member Liz Krueger
Assembly Ways and Means Leadership
Chair Herman D. Farrell, Jr.
Ranking Member Robert C. Oaks
Senate Leadership
Temporary Senate President Dean G. Skelos
Temporary Senate President Jeffrey D. Klein
Senate Minority Leader Andrea Stewart-Cousins
Assembly Leadership
Assembly Speaker Sheldon Silver
Minority Leader Brian M. Kolb
Senator George Latimer (37th Senate District)
Assemblyman David Buchwald (93rd Assembly District)
The Public & The Press