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Budget Hearing of the New York State Legislature on “Local Government Officials/General Government” Monday, January 30, 2017 – The Capitol/Albany, New York

STATEMENT SUPPLEMENTING TESTIMONY of Elena Ruth Sassower, Director of the Center for Judicial Accountability, Inc. (CJA) & Author of, & Plaintiff in, Citizen-Taxpayer Action CJA, et al. v. Cuomo, et al. (Albany Co. #5122/16)

As in past years, there is NO legislative budget hearing at which the Temporary Senate President and Assembly Speaker – or anyone on their behalf – are testifying in support of the Legislature’s proposed budget. Nor do the Legislature’s four “color books” furnish ANY analysis of the Legislature’s proposed budget.

This year’s Senate Majority’s “White Book” and Assembly Majority’s “Yellow Book” do not even mention the Legislature’s proposed budget. As for the Senate Minority’s “Blue Book”, it offers a single sentence:

“Legislature: The Legislature proposes a 3% increase, its first budget increase since 2011.” (at p. 111).

Only marginally more expansive is the Assembly Minority’s “Green Book”. It states:

“Legislature:

“Significant increases include:

\$226.1 million for the Legislature, \$6.2 million more than last year.

This represents a 2.7% increase in spending.” (underlining added)

Yet, these figures from the “Green Book” are different from the figures in the budget narrative that Temporary Senate President Flanagan and Assembly Speaker Heastie transmitted to Governor Cuomo, which were, as follows:

“The recommended General Fund appropriation of \$224,380,145 for FY 2017-18 for the Legislature represents an increase of 3% or \$6,535,344 from the amount appropriated in FY 2016-17.” (budget narrative, p. 1, underlining added).

To assist legislators and the Legislature’s “appropriate committees” in discharging their duties with respect to the Legislature’s own budget, below are questions to ask Temporary Senate President Flanagan and Assembly Speaker Heastie about their proposed legislative budget – and about the 26 pages of legislative reappropriations that were not part of their proposed legislative budget but which have popped into Governor Cuomo’s combined Legislative/Judiciary Budget Bill #S.2001/A.3001 in an out-of-sequence section at the back.

As for the unconstitutionality of such proposed legislative budget and such legislative reappropriations inserted in the Legislative/Judiciary budget bill – repeating what occurred in prior budget cycles – it is laid out by the first and third causes of action of the September 2, 2016 verified complaint in the Center for Judicial Accountability’s citizen-taxpayer action against Governor Cuomo, Temporary Senate President Flanagan, Assembly Speaker Heastie, the Senate, and Assembly, among others. The verified complaint is posted on CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link: “CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’ & Unconstitutional ‘Three Men in a Room’ Governance”. Also posted is the lawsuit record – and from it you can readily verify plaintiffs’ entitlement to summary judgment on their first and third causes of action – and on all eight of their other causes of action, as well.

Suffice to note that the tenth cause of action is germane to the “local government officials” portion of this budget hearing, as it pertains to the unconstitutionality and unlawfulness of the \$4,212,000 appropriation in the Aid to Localities budget bill for fiscal year 2016-2017, reimbursing the counties for district attorney salaries, identically repeated in the Aid to Localities budget bill for fiscal year 2017-2018.

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**Questions that Legislators & “Appropriate Committees” Should be Asking
Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie
about their Proposed Legislative Budget for Fiscal Year 2017-2018
& Legislative/Judiciary Budget Bill #S.2001/A.3001¹**

- (1) Article VII, §1 of the New York State Constitution requires that “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house” be transmitted to the Governor before December 1st of each year, is that correct?
- (2) By a one-sentence coverletter to the Governor, dated December 1, 2016, on a letterhead of the “New York State Legislature” and bearing your printed names, titles, and signatures, you stated:

“Attached hereto is a copy of the Legislature’s Budget for the 2017-2018 fiscal year pursuant to Article VII, Section 1 of the New York State Constitution.”

In so doing, you did not purport that such attached budget represented “itemized estimates of the financial needs of the legislature”, right? Nor did you purport to have certified it, right?

- (3) Your attached budget consisted of a four-page budget narrative, with a fifth page of “Budget Highlights – Joint Entities”, plus a sixth page chart entitled “All Funds Requirements for the Legislature”, followed by a ten-page “Schedule of Appropriations”. These 16 pages neither included a certification, nor referred to “itemized estimates” of the Legislature’s “financial needs”, nor to Article VII, §1, right?

¹ The Legislature’s proposed budget, the Legislative/Judiciary budget bill, and all referred-to documents are posted on CJA’s website, www.judgewatch.org, accessible *via* the prominent homepage link: “2017 Legislative Session”

- (4) Would you agree that you did not furnish the Governor with “itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house” – and that you did not purport to be doing so?
- (5) Doesn’t the failure of your December 1, 2016 coverletter to even claim to be furnishing the Governor with “itemized estimates of the financial needs of the legislature” reflect your knowledge that your transmitted budget was not “itemized estimates of the financial needs of the legislature”. Isn’t that why you did not certify it?
- (6) The budget you transmitted to the Governor contained no “General State Charges” for the Legislature, *to wit*, the “fringe benefits” that are pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees, is that correct?
- (7) Where are the Legislature’s “General State Charges”? How much are they and did you certify them to be “itemized estimates” of the Legislature’s “financial needs” with respect to its “General State Charges”?
- (8) The figures in the chart of “All Funds Requirements for the Legislature” are identical to those in the charts of “All Funds Requirements for the Legislature” from the past five years – except for an essentially across-the-board 3% increase. Is that correct?
- (9) Can you explain how any cognizable “process” of ascertaining the Legislature’s actual “financial needs” could have produced so many years of identical budgets and such a neat 3% increase for the upcoming fiscal year?
- (10) Do you agree that Article VII, §1 of the New York State Constitution does not vest you with the power to determine the “itemized estimates of the financial needs of the legislature”, but only to certify same?
- (11) Do you agree that the logical reason why 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””?
- (12) Do you agree that the Senate Committee on Investigations and Government Operations and Assembly Committee on Governmental Operations would be the “appropriate committees” of the Legislature to formulate the Legislature’s budget?
- (13) Describe the “process”, if any, by which the Legislature’s budget for fiscal year 2017-2018 was compiled?
- (14) Wouldn’t the process of compiling “itemized estimates of the legislature’s financial needs” require soliciting the Legislature’s 213 members and the 34 Senate standing committees and purported 38 Assembly standing committees as to their “financial needs”?

- (15) By the way, why does the Legislature's budget purport that there are 38 Assembly standing committees when Assembly Rule IV, §1(a) and the Assembly's website identify 37 Assembly standing committees?
- (16) Were legislators and the standing committees ever solicited as to their "itemized estimates" of their "financial needs"?
- (17) Would you agree that more than half of the ten-page "Schedule of Appropriations" (pp. 11-16) is devoted to less than 10% of the budget?
- (18) Would you agree that most of the 90% balance of the "Schedule of Appropriations" for fiscal year 2017-2018 (pp. 7-10) relates to member offices, legislative committees, and central staff?
- (19) Would you agree that this 90% of the budget relating to member offices, legislative committees, and central staff (pp. 7-10) lacks itemization sufficient for intelligent and meaningful review?
 - (a) why are appropriations for member offices combined with appropriations for legislative committees? (pp. 7, 9) Doesn't this make it impossible to know total appropriations for member offices and total appropriations for legislative committees, let alone to evaluate appropriation levels of individual member offices and individual legislative committees?;
 - (b) why is the Assembly Ways and Means Committee the only legislative committee whose funding is identified (p. 10)? What about the funding of the Senate Finance Committee? How about the funding of the other 37 (36) Assembly committees and the other 33 Senate committees?;
 - (c) what is the funding for the 213 legislators' offices, cumulatively and individually?;
 - (d) what is the funding for the 72 (71) standing committees, cumulatively and individually?;
 - (e) What do "senate operations" and "[assembly] administrative and program support operations" (pp. 8, 9) consist of?
- (20) The budget that your December 1, 2016 coverletter transmitted to the Governor contained no legislative reappropriations, correct?
- (21) Do you agree that when the Governor combined the Legislature's budget with the Judiciary's budget in his Budget Bill #S.2001/A.3001, he was able to conceal 26 pages of legislative reappropriations (pp. 27-53) that were not part of your December 1, 2016 transmittal to him?
- (22) Do you agree that these 26 pages of legislative reappropriations are – as reflected by the end-page Table of Contents for Legislative/Judiciary Budget Bill #S.2001/A.3001 (p. 54) – in an out-of-sequence section at the back of the bill? And shouldn't the first page of these 26 pages (p. 27) be prominently marked "Reappropriations", just as the first page of the Judiciary's "Reappropriations" is (p.23)?

- (23) Can you explain where the 26 pages of legislative reappropriations (pp. 27-53) came from?
- (a) When and in what fashion were they transmitted to the Governor?;
 - (b) Did you certify the dollar amounts of these legislative reappropriations and, additionally, that they were suitable for designation as reappropriations?;
 - (c) Are they?;
 - (d) What is the cumulative total of these 26 pages of legislative reappropriations?
- (24) Do you expect that these legislative reappropriations will be changed? What will be the basis? By what process? Will these changed reappropriations be certified? By whom?
- (25) The Governor's Legislative/Judiciary Budget Bill #S.2001/A.3001 contains no cumulative tally for its monetary allocations for the Legislature, is that correct? What is the dollar amount? Is it the addition of appropriations in its §1 (pp. 1-9) and reappropriations in its §4 (pp. 27-53)?
- (26) As the Governor's Legislative/Judiciary Budget Bill #S.2001/A.3001 identifies no appropriations of "General State Charges" for the Legislature – in contrast to the appropriations it identifies for "General State Charges" for the Judiciary (pp. 21-22) – where can they be found?