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Budget Hearing of the New York State Legislature on “Local Government Officials/General Government” Monday, February 5, 2018 – The Capitol/Albany, New York

STATEMENT IN SUPPORT OF TESTIMONY

**of Elena Ruth Sassower, Director of the Center for Judicial Accountability, Inc. (CJA)
& Author of, & Plaintiff in, Citizen-Taxpayer Actions, Brought in the Public Interest,
on Behalf of the People of the State of New York, Challenging the Budget,
CJA, et al. v. Cuomo, et al., (Albany Co. #1788-2014; #5122-2016)**

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.

Indeed, as was the case last year, neither the Senate Majority’s “White Book” nor the Assembly Majority’s “Yellow Book” even mention the Legislature’s proposed budget. And the Senate Minority’s “Blue Book”, which last year offered up a single sentence, this year does not even do that. As for the Assembly Minority’s “Green Book”, the sum total of what it says is as follows:

“Legislature:

\$226.2 million for the Legislature, \$4.1 million more than last year. This represents a 1.9% increase in spending.”

This, however, is not what is purported in the Legislature’s proposed budget, as transmitted by Temporary Senate President Flanagan and Assembly Speaker Heastie to Governor Cuomo on December 1, 2017. It states, at the outset of its budget narrative:

“The recommended General Fund appropriation of \$228,867,749 for FY 2018-19 for the Legislature represents an increase of 2% or \$4,487,603 from the amount appropriated in FY 2017-18.” (at p. 1)

In other words, the “Green Book” inexplicably gives a cumulative tally for the Legislature’s proposed budget that is more than \$2,500,000 less than the figure furnished by the proposed budget itself, and gives a dollar increase figure that is also less – by approximately \$400,000.

As for Governor Cuomo's Legislative/Judiciary Budget Bill #S.7501/A.9501, it contains no cumulative dollar total for the Legislature's budget. Likewise, none for the Judiciary's budget. Nor does it give a cumulative dollar total for the two budgets which, to better conceal what is going on with each, are combined onto a single budget bill, rather than two separate budget bills, as would befit the Legislature and Judiciary as two separate government branches, not agencies.

To assist legislators and the Legislature's "appropriate committees" in discharging their duties to scrutinize the Legislature's own budget – and to furnish New York taxpayers with accurate dollar and percentage figures – below are questions to ask Temporary Senate President Flanagan and Assembly Speaker Heastie about the Legislature's uncertified December 1, 2017 proposed budget – and what it did not include, *inter alia*: (1) the Legislature's general state charges; and (2) the 28 pages of untallied legislative reappropriations that appear in an out-of-sequence section at the back of Governor Cuomo's Legislative/Judiciary Budget Bill #S.7501/A.9501.

As for the unconstitutionality, unlawfulness, and fraud of both the Legislature's proposed budget and the out-of-thin-air legislative reappropriations that have been popped into Legislative/Judiciary Budget Bill #S.7501/A.9501 – repeating what occurred in prior budget cycles – it is laid out by the first and third causes of action of each of plaintiffs' five pleadings in their citizen-taxpayer actions, suing the Temporary Senate President, the Assembly Speaker, and you – the Senate and Assembly – as well as Governor Cuomo, Attorney General Schneiderman, and Comptroller DiNapoli –for "grand larceny of the public fisc" and other corruption with respect to the budget, spanning fiscal years 2014-2015, 2015-2016, 2016-2017, 2017-2018.

These five pleadings are all 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". Likewise, the record thereon – constituting a "perfect paper trail" from which you can readily verify plaintiffs' entitlement to summary judgment on their first and third causes of action of each pleading – and on all their other causes of action, as well. And you can also verify, readily, why plaintiffs could not obtain the summary judgment declarations on their causes of action, namely, that any semblance of a cognizable judicial process was obliterated by a double-whammy of:

- litigation fraud by defendant Attorney General Schneiderman, representing himself and his co-defendants, and
- fraudulent judicial decisions by judges who have interests in the Judiciary budget – the subject of the second cause of action of each pleading – and direct and HUGE financial interests in the judicial salary increases it encompasses arising from the August 29, 2011 report of the Commission on Judicial Compensation, and – pertaining to the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – direct and HUGE financial interests in the thirteenth, fourteenth, and fifteenth causes of action of the March 23, 2016 verified second supplemental complaint in plaintiffs' first citizen-taxpayer action, thereafter

reconstituted as the sixth, seventh, and eighth causes of action in the September 2, 2016 verified complaint in plaintiffs' second citizen-taxpayer action, to which, additionally, Chief Judge DiFiore was a named defendant.

As for the "local government officials" portion of this budget hearing, the tenth cause of action of plaintiffs' September 2, 2016 verified complaint pertains to the unconstitutionality and unlawfulness of the \$4,212,000 appropriation in Governor Cuomo's Aid to Localities budget bill for fiscal year 2016-2017, reimbursing the counties for district attorney salaries. Although the Governor's proposed Aid to Localities Budget Bill #S.7503/A.9503 for fiscal year 2018-2019 (at p. 47) does NOT identically repeat the appropriation item of the Aid to Localities budget bill for fiscal year 2016-2017, repeated from prior fiscal years and then continued for fiscal year 2017-2018, its identical and comparable features are embraced within the challenge of that tenth cause of action.

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Questions that Legislators & "Appropriate Committees" Must Ask
Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie
about their Proposed Legislative Budget for Fiscal Year 2018-2019
& Legislative/Judiciary Budget Bill #S.7501/A.9501¹

- (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 Governor Cuomo, dated December 1, 2017, 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 2018-2019 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 4-1/4 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 an eleven-page "Schedule of Appropriations". These 17 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, Legislative/Judiciary Budget Bill #S.7501/A.9501, and all referred-to documents are posted on CJA's website, www.judgewatch.org, accessible via the prominent homepage link: "2018 Legislative Session".

- (4) Would you agree that you did not furnish Governor Cuomo 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, 2017 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 Governor Cuomo 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 that last year’s Legislative budget contained an essentially across-the-board 3% increase and this year’s contains an essentially across-the-board 2% 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, followed by a neat 2% increase?
- (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 2018-2019 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 37 Assembly standing committees as to their “financial needs”?
- (15) Were legislators and the standing committees solicited as to their “itemized estimates” of their “financial needs” for the fiscal year 2018-2019 Legislative budget?
- (16) Would you agree that more than half of the eleven-page “Schedule of Appropriations” (pp. 11-17) is devoted to less than 10% of the budget?
- (17) Would you agree that the five pages devoted to “Senate and Assembly Joint Entities” (pp. 11-15):
 - (a) omits most of the joint entities that the Legislature is required to establish and fund pursuant to Legislative Law, Article 5-A (§§82, 83) – and, among these, the Legislative Commission on Government Administration and the Legislative Commission on State-Local Relations;
 - (b) omits the Administrative Regulations Review Commission, required to be established and funded pursuant to Legislative Law, Article 5-B (§§86-88)
- (18) Would you agree that most of the 90% balance of the “Schedule of Appropriations” for fiscal year 2018-2019 (pp. 7-10) relates to member offices, legislative standing committees, and central staff?
- (19) Would you agree that this 90% of the budget relating to member offices, legislative standing 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 standing committees, let alone to evaluate appropriation levels of individual member offices and individual legislative standing committees?;
 - (b) why is the Assembly Ways and Means Committee the only legislative standing committee whose funding is identified (p. 10)? What about the funding of the Senate Finance Committee? How about the funding of the other 36 Assembly standing committees and the other 33 Senate standing committees?;

- (c) what is the funding for the 213 legislators' offices, cumulatively and individually?;
 - (d) what is the funding for the 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, 2017 coverletter transmitted to Governor Cuomo contained no legislative reappropriations, correct?
- (21) Do you agree that when Governor Cuomo combined the Legislature's budget with the Judiciary's budget in his Budget Bill #S.7501/A.9501, he was able to conceal 28 pages of legislative reappropriations (pp. 26-53) that were not part of your December 1, 2017 transmittal to him?
- (22) Do you agree that these 28 pages of legislative reappropriations are – as reflected by the end-page Table of Contents for Legislative/Judiciary Budget Bill #S.7501/A.9501 (p. 55) – in an out-of-sequence section at the back of the bill? And shouldn't the first page of these 28 pages (p. 26) be prominently marked "Reappropriations", just as the first page of the Judiciary's "Reappropriations" is (p.23)?
- (23) Can you explain where the 28 pages of legislative reappropriations (pp. 26-53) came from?
- (a) When and in what fashion were they transmitted to Governor Cuomo?;
 - (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 28 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) Governor Cuomo's Legislative/Judiciary Budget Bill #S.7501/A.9501 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. 26-53)?

- (26) As Governor Cuomo’s Legislative/Judiciary Budget Bill #S.7501/A.9501 identifies no appropriations of “General State Charges” for the Legislature – in contrast to the appropriations it identifies for the Judiciary’s “General State Charges” (pp. 21-22) – where can they be found, what is their total, and what is their dollar and percentage increase over fiscal year 2017-2018?
- (27) Can you explain why your budget narrative, transmitted by your December 1, 2017 letter, significantly changes the text that is under the heading “FISCAL COMMITTEES” (at p. 3), which in past years had read:

“...the Chairmen and ranking Minority Members of the Senate Finance Committee and the Assembly Ways and Means Committee function as an Audit Committee, with the responsibility to select an independent certified accountant to conduct an audit of the state’s annual financial statements, receive the results of such independent audit, and submit the resulting audit certification to the State Comptroller for the State’s Comprehensive Annual Financial Report.”

to the following:

“...the Chairmen and ranking Minority Members of the Senate Finance Committee and the Assembly Ways and Means Committee function as an Audit Committee, in order receive (sic) the results of each independent audit of the state’s annual financial statement required pursuant to section eight of the State Finance Law.”

In other words, why does it remove the language that had identified the responsibility of the chairs and ranking members of the Senate and Assembly fiscal committees to:

- (a) “select an independent certified accountant to conduct an audit of the state’s annual financial statements”; and
- (b) “submit the resulting audit certification to the State Comptroller for the State’s Comprehensive Annual Financial Report.”