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PRESS RELEASE

March 31, 2013

**THE UNFINISHED NEW YORK STATE BUDGET STORY
ON THE GOVERNOR'S DESK**

Your coverage of the New York State budget makes it appear that the story ends with the Legislature's passage of budget bills.

Is this what the People should believe? And is it your view that the "behind-closed-doors" deal-making by the "three (or has it been four?) men in a room" – Cuomo, Skelos, Silver (& Klein) – dispenses with Article VII, Sec. 4 of the State Constitution?

Attached is that constitutional provision – and Article VII, Sec. 1 – so that you can see for yourself that the procedure for appropriations for the Executive branch is different from the procedure for appropriations for the Legislature and Judiciary, the entirety of which go before the Governor, subsequent to the Legislature's vote.

What coverage have you given to the budgets of these two separate government branches, merged into a single appropriations bill, S.2601/A.3001?

To assist your coverage, additionally attached is the Center for Judicial Accountability's March 29th letter to the Governor's Chief of Staff entitled:

"The Governor's Duty to Disapprove S.2601-A/A.3001-A (Judiciary/Legislative Appropriations Bill), Pursuant to Article VII, §4 & Article IV, §7 of the New York State Constitution, Because the Legislature Violated Express Constitutional and Statutory Safeguards, as well as its Own Rules, in Passing It" (underlining in the original).

The letter is posted on CJA's website, www.judgewatch.org – on our NEW webpage entitled "**Holding Government Accountable for its Grand Larceny of the Public Fisc**", accessible *via* the top panel "Latest News". For your convenience, here's the direct link, <http://www.judgewatch.org/web-pages/judicial-compensation/grand-larceny-of-public-fisc.htm> .

Perhaps you will begin your investigative reporting by confirming that the letter was brought to the Governor's attention "without delay", as therein requested – and that the Governor's office never announced any photo-op, public signing of S.2601-A/A.3001-A.

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* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

THE CONSTITUTION OF THE STATE OF NEW YORK

ARTICLE VII STATE FINANCES

[Estimates by departments, the legislature and the judiciary of needed appropriations; hearings]

Section 1. For the preparation of the budget, the head of each department of state government, except the legislature and judiciary, shall furnish the governor such estimates and information in such form and at such times as the governor may require, copies of which shall forthwith be furnished to the appropriate committees of the legislature. The governor shall hold hearings thereon at which the governor may require the attendance of heads of departments and their subordinates.

Designated representatives of such committees shall be entitled to attend the hearings thereon and to make inquiry concerning any part thereof.

Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as the governor may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature. (Amended by vote of the people November 8, 1977; November 6, 2001.)

[Executive budget]

§2. Annually, on or before the first day of February in each year following the year fixed by the constitution for the election of governor and lieutenant governor, and on or before the second Tuesday following the first day of the annual meeting of the legislature, in all other years, the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as the governor may deem proper and such additional information as may be required by law. (New. Derived in part from former §2 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 2, 1965; November 6, 2001.)

[Budget bills; appearances before legislature]

§3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.

The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills.

The governor and the heads of departments shall have the right, and it shall be the duty of the heads of departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law. (New. Derived in part from former §§2 and 3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Action on budget bills by legislature; effect thereof]

§4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV. (New. Derived in part from former §3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

[Restrictions on consideration of other appropriations]

§5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill. (New. Derived in part from former §4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Restrictions on content of appropriation bills]

§6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation. (New. Derived in part from former §22 of Art. 3 and former §4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Appropriation bills]

§7. No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. (New. Derived in part from former §21 of Art. 3. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

As Revised, with Amendments adopted by the
Constitutional Convention of 1938 and
Approved by Vote of the People on
November 8, 1938
and

Amendments subsequently adopted by the
Legislature and Approved by Vote of the People.

As Amended and in Force Since January 1, 2010

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March 29, 2013

TO: Josh Vlasto, Chief of Staff to Governor Andrew Cuomo

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

RE: The Governor's Duty to Disapprove S.2601-A/A.3001-A (Judiciary/Legislative Appropriations Bill), Pursuant to Article VII, §4 & Article IV, §7 of the New York State Constitution, Because the Legislature Violated Express Constitutional and Statutory Safeguards, as well as its Own Rules, in Passing It

This follows up my two phone calls earlier today – at 11:10 am & 4:00 pm – requesting to speak with you and leaving substantive messages with Lauren McCabe, who told me that the Governor's counsel, Mylan Denerstein, was not in.

I look forward to speaking with you – or Ms. Denerstein – as soon as possible, anytime during the weekend – as it is essential that the Governor take steps to protect the public purse from judicial salary increases he KNOWS to be statutorily-violative, fraudulent, and unconstitutional, as would be evident were he to disgorge such findings of fact and conclusions of law as he made – or as were made on his behalf by Ms. Denerstein or other counsel – with respect to CJA's October 27, 2011 Opposition Report and the four causes of action of our public interest lawsuit based thereon – *CJA, et al. v. Cuomo, et al.*

Please be advised – and I hereby give notice – that the Legislature's passage of the budget for fiscal year 2013-2014 violated express constitutional and statutory safeguards and its own rules – particularly its passage of Judiciary appropriations bill S.2601-A/A.3001-A – the same bill as contains the Legislature's appropriations.

To the extent you are unaware of these violations, we have steadily chronicled them, since February 6th, by the primary-source materials posted on our website, www.judgewatch.org, on the webpage devoted to "Securing Legislative Oversight & Override of the judicial pay raises...". Increasingly, these have pertained to violations affecting not only S.2601-A/A.3001-A, but the entire budget. Our new webpage "Holding Government Accountable for its Grand Larceny of the Public Fisc", which, as I told Ms. McCabe, I have been constructing since I got up this morning to aid the Governor in

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understanding the situation, showcases these violations no less prominently. Both webpages are accessible *via* the “Latest News” top panel of our website. Here’s the direct link: <http://www.judgewatch.org/web-pages/cja/latest-news.htm>

I particularly draw to your attention:

- (1) CJA’s March 22nd letter to the General Budget Conference Committee & its Subcommittee on “Public Protection”, Criminal Justice, & Judiciary entitled “The Public’s Right to Know the ‘Process’ Behind Adoption of Senate Resolution 818 and Assembly Resolution 812”;
- (2) the videos of what took place on the floor of the Senate – and at the Senate Finance Committee, called from the floor – on March 24th and March 26th;
- (3) CJA’s March 28th e-mail to Assembly Members David Buchwald and Steve Katz entitled “Annotations for SUCCESSFUL due process-procedural objections on Assembly floor”, highlighting “report” and “memo’ requirements; and
- (4) CJA’s March 28th letter to the Secretary of State and Assembly Public Information Office, requesting ‘...Such Filed ‘Written Report(s)’ as the Joint Budget Conference Committee and its Subcommittees Rendered”.

These are must-reads – as is CJA’s March 24th letter to Senators entitled “Why You Must Reject S.2601: The Appropriations Bill for the Judiciary”, which, on March 26th, we replicated, essentially *verbatim*, for our letter to Assembly Members pertaining to A.3001. Also, a must-read, CJA’s March 11th letter, summarizing and elaborating upon my testimony at the Legislature’s February 6th budget hearing on “public protection” – a copy of which we enclosed with our March 19th letter to the Governor. That letter, to which we received no response from the Governor, was entitled:

“Assisting the Legislature in Discharging its Constitutional Duty: The People’s Right to Know the Dollar Cost of the Judiciary Budget & of the Appropriations Bill for the Judiciary & to be Protected from ‘Grand Larceny of the Public Fisc’ by Unidentified, Unitemized Judicial Pay Raises, whose Fraudulence, Statutory-Violations, and Unconstitutionality are *Proven by Documentary Evidence in Your Possession & the Legislature’s*” (underling & italics in March 19th letter).

Pursuant to Article VII, §4 of the New York State Constitution, budget bill S.2601-A/A.3001-A does not become “law immediately without further action by the governor”. Rather, it is “subject to his approval as provided in section 7 of Article IV”.

Based on the foregoing correspondence and videos posted on our website, it is the Governor’s duty to New York’s citizens and taxpayers NOT to sign S.2601-A/A.3001-A. Indeed, CJA’s March 24th

/26th letters to Senators and Assembly Members not only presented four decisive grounds for rejecting S.2601-A/A.3001-A as pertains to its judiciary portion, but a sufficient ground for rejecting its legislative portion. This, in footnote 2, stating:

“...The budget that Temporary President Skelos and Assembly Speaker Silver submitted to the Governor for the Legislature under a November 30, 2012 coverletter contained no ‘General State Charges’ – and the appropriations for the Legislature in S.2601/A.3001, replicating the leadership’s budget submission, contains none.

In response to our request, the Secretary of the Senate purported that the leadership’s budget submission is ‘not available pursuant to Senate Rules’. The Assembly’s Public Information Office furnished the budget submission, but without ‘General State Charges’, thereafter stating that it has ‘no records that are responsive’. The correspondence is posted on our website.

As legislators and legislative staff do receive ‘fringe benefits’ – ‘pension contributions, Social Security, health, dental vision and life insurance’, etc. – the absence in S.2601/A.3001 of ‘General State Charges’ for the Legislature renders the bill materially incomplete and constitutes a further ground to reject it, over and beyond its deficiencies pertaining to the Judiciary.” (March 24th letter to the Senators, underlining in the original).

By copy of this letter to Budget Director Robert Megna, we request that he identify where the Legislature’s “General State Charges” are to be found. To obtain same, including the certifications thereof by Temporary Senate President Skelos and Assembly Speaker Silver, this letter is also being e-mailed, as a FOIL request, to the Governor’s records access officer.

Needless to say, the fact that the Governor provided no “Commentary” to the Legislature’s budget, in contrast to his superficial “Commentary” to the Judiciary’s budget, only underscores that IF his Division of the Budget examined the Legislature’s budget, it was with even less care than its palpably deficient examination of the Judiciary’s budget, endorsed by the Governor’s “Commentary”. Such makes it all the more appropriate that the Governor now discharge his check-and-balances duty with respect to the budgets of these two separate branches, which should not have been, but were, joined on the same bill.

In view of the serious and substantial nature of this letter and its political and other ramifications for the Governor, kindly furnish it to him, without delay.

Thank you.

A handwritten signature in black ink, appearing to read "Josh Vlasto", with a long horizontal flourish extending to the right.

cc: Mylan Denerstein, Counsel to Governor Cuomo
Budget Director Robert L. Megna
Justin C. Levin, Records Access Officer
& FOIL Counsel to Governor Cuomo
The Public & The Press