

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Monday, September 28, 2015 3:18 PM
To: adrienne.kerwin@ag.ny.gov
Subject: Citizen-Taxpayer Action: CJA v. Cuomo II (Albany Co. #1788-14)

Dear Ms. Kerwin,

Following up your call-back to me on Friday, here's Assembly Bill #07997, introduced on June 3, 2015, which I discovered a day or two after e-mailing and mailing plaintiffs' September 22nd reply/cross-motion to your dismissal/summary judgment

motion: http://assembly.state.ny.us/leg/?default_fld=&bn=A07997&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y. As discussed, the memo delineates the unconstitutionality of the provision that allows the pay raise recommendations of the Commission on Legislative, Judicial, and Executive Compensation to take effect, automatically, without requiring any affirmative legislative action – replicating the identical provision in Chapter 567 of the Law of 2010, whose unconstitutionality CJA has been challenging, as likewise the fraudulent and statutorily-violative judicial pay raises it has enabled.

Please show it to your superiors – and also CJA's September 22nd reply/cross-motion papers. I would have no objection to your withdrawing your dismissal/summary judgment motion, consistent with your duty under New York's Rules of Professional Conduct for Attorneys, Executive Law 63.1, and State Finance Law Article 7-A – and engaging in settlement discussions.

Please advise.

Thank you.

Elena Sassower, plaintiff *pro se*,
acting on her own behalf and on behalf of the People of the State of New York & the public interest

A07997 Summary:

BILL NO A07997

SAME AS No same as

SPONSOR Goodell (MS)

COSPNSR Lopez, Duprey, Nojay

MLTSPNSR Johns

Amd Part E SS2 & 3, rpld Part E S4, Chap 60 of 2015

Relates to providing periodic salary adjustments to state officers.

A07997 Actions:

BILL NO A07997

06/03/2015 referred to governmental operations

A07997 Votes:*There are no votes for this bill in this legislative session.***A07997 Memo:**

BILL NUMBER:A7997

TITLE OF BILL: An act to amend chapter 60 of the laws of 2015, relating to providing periodic salary increases to state officers, in relation to salary adjustments; and to repeal section 4 of part E of such chapter relating thereto

PURPOSE OR GENERAL IDEA OF THE BILL:

The purpose of this legislation is eliminate the provisions in the 2015 budget that stated that the salary determinations of the special commission on compensation could become effective automatically "with the force of law," and could "supersede" any inconsistent provisions of the Judiciary Law, Executive Law, and Legislative Law, without any further legislative action.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1 of the bill replaces all references to a salary "increase" with neutral references to a salary "adjustment."

Section 2 of the bill requires the salary review commission to make all of its salary recommendations by December 31, 2015, rather than

Ex 22-6

delay the salary recommendations for members of the legislature until November 15, 2016, after the next election. In addition, section 2 of the bill eliminates the provisions that require the recommendations of the salary review commission to become effective with the force of law automatically without any further action by the legislature.

Section 3 of the bill repeals the provisions relating to the effective date of any automatic salary increase.

Section 4 would make the bill effective immediately.

JUSTIFICATION:

On March 31, 2015, a 137 page budget bill (S4610-A/A6721- A) was introduced, and was adopted by the Senate late that evening. The Senate bill was adopted by the Assembly after 2:30am on April 1, 2015.

This budget bill included, inter alia, legislation to establish a special commission on compensation (hereinafter "Commission") consisting of seven members, with three appointed by the Governor, one appointed by the Temporary President of the Senate, one appointed by the Speaker of the Assembly, and two appointed by the Chief Judge of the State of New York. There were no appointments from the Senate minority or the Assembly minority.

This budget bill required the Commission to make its recommendations for judicial compensation not later than December 31, 2015, and for legislative and executive compensation not later than November 15, 2016. The budget bill further stated that such determinations shall have "the force of law" and shall "supercede" inconsistent provisions of the Judiciary Law, Executive Law, and the Legislative Law, unless modified or abrogated by statute.

This budget bill would enable legislators to receive substantial salary increases after the next election without incurring any political backlash for voting for those increases.

The budget bill was clear that the salary recommendations for legislators would not be announced until after the next election, too late to encourage potential candidates to run in the election against the incumbents and too late to require incumbents to justify such a salary increase during the election.

By making the salary increases automatic, the legislators would not need to vote on such increases at all, thereby enabling the legislators to avoid the political liability that would result from voting for large and unpopular salary increases for themselves. Indeed, since the Legislature would normally not be in session immediately after an election, there would not even be an opportunity for individual legislators to vote on such salary increase unless both houses of the legislature were called back into special session for

this specific purpose. This would enable all the legislators to speak out against the salary recommendations, while knowing that they would not actually need to vote against such increases.

In addition to being a devious and underhanded means of obtaining a salary increase without accepting any responsibility therefor, this budget bill language violates several fundamental provisions of the New York State Constitution, including the following:

a. Article III, Section 6 of the New York State Constitution states that each member of the legislature shall receive an annual salary "to be fixed by law." The Constitution does not state that members of the legislature shall receive a salary "to be fixed by a commission."

b. Article III, Section 1 of the New York State Constitution states that the legislative power "shall be vested in the Senate and Assembly." A non-elected commission cannot be delegated legislative power to enact recommendations "with the force of law" that can "supercede" inconsistent provisions of law.

c. Article III, Section 6 of the New York State Constitution states that legislators shall continue to receive their current salary "until changed by law." A non-elected commission cannot "change the law" since only the State Legislature has the power to change the law.

d. Article III, Section 13 of the New York State Constitution states that "no law shall be enacted except by a bill," yet the salary commission was given the power to enact salary recommendations "with the force of law" without any legislative bill approving of such salaries being considered by the legislature.

e. Article III, Section 14 of the New York State Constitution states that no bill shall be passed "or become law" except by the vote of a majority of the members elected to each branch of the legislature. The budget bill, however, stated that the recommendations of the salary commission would "have the force of law" without any vote whatsoever by the legislators. Such a provision deprives the members of the legislature of their Constitutional right to vote on every bill prior to its enactment into law.

f. Article IV, Section 7 of the New York State Constitution gives the Governor the authority to veto any bill, but there is no corresponding ability of the Governor to veto any recommendations of the salary commission before such recommendations would become effective. g. Article VII, Section 6 of the New York State Constitution states in relevant part that "(n)o provision shall be embraced in any appropriation bill unless it relates specifically to some particular appropriation in the bill," yet there was no appropriation in the budget bill relating to the salary commission. Thus, this legislation was improperly submitted and considered by the legislature as an unconstitutional rider to a budget bill.

The within bill would repeal the unconstitutional provisions that enable the salary recommendations to become effective automatically "with the force of law" that would "supercede" inconsistent statutory provisions. In addition, this bill would require the salary recommendations for legislators to be made on or before December 31, 2015, thereby providing adequate time for any salary adjustments to be enacted by the State Legislature, funding to be provided in the next State budget, and notice given to all potential candidates of the salary the will apply following the next election.

PRIOR LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None to the State.

EFFECTIVE DATE:

The bill would become effective immediately.

A07997 Text:

S T A T E O F N E W Y O R K

7997

2015-2016 Regular Sessions

I N A S S E M B L Y

June 3, 2015

Introduced by M. of A. GOODELL, LOPEZ, DUPREY -- Multi-Sponsore
M. of A. JOHNS -- read once and referred to the Committee on
mental Operations

AN ACT to amend chapter 60 of the laws of 2015, relating to pr
periodic salary increases to state officers, in relation to
adjustments; and to repeal section 4 of part E of such chapter
ing thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Paragraph (b) of subdivision 2 of section 2 of pa
- 2 chapter 60 of the laws of 2015, relating to providing periodic in
- 3 to state officers, is amended to read as follows:
- 4 (b) The commission shall determine whether: (1) for any of th

5 years commencing on the first of April of such years, following t
 6 in which the commission is established, the annual salaries
 7 judges and justices of the state-paid courts of the unified court
 8 and housing judges of the civil court of the city of New York
 9 [an increase] ADJUSTMENT; and

10 (2) on the first of January after the November general elec
 11 which members of the state legislature are elected following the
 12 which the commission is established, and on the first of January
 13 ing the next such election, the like annual salaries and allowar
 14 members of the legislature, and salaries of statewide elected of
 15 and state officers referred to in section 169 of the executi
 16 warrant [an increase] ADJUSTMENT.

17 S 2. Subdivision 7 of section 3 of part E of chapter 60 of the
 18 2015, relating to providing periodic salary increases to state of
 19 is amended to read as follows:

20 7. The commission shall make a report to the governor, the legi
 21 and the chief judge of the state of its findings, conclusions, c
 22 nations and recommendations, if any, not later than the thirty-fi

EXPLANATION--Matter in ITALICS (underscored) is new; matter in b
 [] is old law to be omitted.

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1 December of the year in which the commission is established [fc
 2 cial compensation and the fifteenth of November the following ye
 3 legislative and executive compensation]. Any findings, concl
 4 determinations and recommendations in the report must be adopt
 5 majority vote of the commission and findings, conclusions, c
 6 nations and recommendations with respect to executive and legi
 7 compensation shall also be supported by at least one member appoi
 8 each appointing authority. [Each recommendation made to imple
 9 determination pursuant to section two of this act shall have th
 10 of law, and shall supersede, where appropriate, inconsistent prc
 11 of article 7-B of the judiciary law, section 169 of the executi
 12 and sections 5 and 5-a of the legislative law, unless modified or
 13 gated by statute prior to April first of the year as to whi
 14 determination applies to judicial compensation and January first
 15 year as to which such determination applies to legislative and ex
 16 compensation.]

17 S 3. Section 4 of part E of chapter 60 of the laws of 2015 rela
 18 providing periodic salary increases to state officers is REPEALED

19 S 4. This act shall take effect immediately.