

Center for Judicial Accountability

From: Center for Judicial Accountability <elena@judgewatch.org>
Sent: Friday, June 10, 2016 12:15 PM
To: sacquario@nysac.org; cherryb@co.schoharie.ny.us; zugibet@co.rockland.ny.us; president@daasny.org
Cc: 'flanagan@nysenate.gov'; 'speaker@assembly.state.ny.us'; scousins@nysenate.gov; Assembly Minority Leader Brian M. Kolb; cyoung@nysenate.gov; 'lkrueger@senate.state.ny.us'; 'farrelh@assembly.state.ny.us'; 'oaksR@assembly.state.ny.us'; garvey@nysenate.gov; glavin@nysenate.gov; grelick@nysenate.gov; 'freemanc@assembly.state.ny.us'; 'cburke@nysenate.gov'; latimer@nysenate.gov; loughran@nysenate.gov; mallison@nysenate.gov; buchwaldd@assembly.state.ny.us; steinr@assembly.state.ny.us; 'roithmayra@assembly.state.ny.us'
Subject: What are your positions? -- beginning with repeal of the statutory link between D.A. & judicial salaries

TO: New York State Association of Counties (NYSAC)
ATT: Stephen Acquario, Executive Director
William Cherry, President

District Attorneys Association of the State of New York (DAASNY)
ATT: Thomas Zugibe, President

Please advise as to your positions with respect to the succession of e-mails I have sent you over the past ten days, spanning from my May 31, 2016 e-mail entitled "Protecting County Taxpayers -- Repealing the Statutory Link between District Attorney & Judicial Salaries, Etc.:" to my June 8, 2016 e-mail entitled "THE WRONG BILL A.10152-A -- state reimbursement of district attorney salary increases".

For your convenience the e-mails I sent you are posted on CJA's website. Here's the direct link: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/leg-oversight-over-das.htm>.

Firstly, do you favor repeal of the statutory link set forth in Judiciary Law 183-a, retroactive to April 1, 2016? – thereby rendering superfluous S.7408-A and A.10152-A, identically providing for state reimbursement to the counties of the cost of the district attorney salary increases resulting from the "force of law" judicial salary increases of the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation. If not, why not? Do you have any evidence that the current salaries for the district attorneys in the 57 counties outside New York City – raised over \$30,000 since 2012 – are inadequate or not "fair and just" and require an increase of another \$30,000? Do you have figures for each of the 57 counties as to this year's increase in district attorney salary/compensation resulting from the December 24, 2015 report. How about for 2018? Do you have figures for district attorney salary/compensation for fiscal years 2007, 2011, 2012, 2013, 2014, 2015 for those 57 counties? By way of further comparison, do you have salary/compensation figures for the counties' other elected officers for those same years? And what are average/median income figures in the counties, including for attorneys in private practice?

Secondly, do you agree that the Commission's December 24, 2015 report is a "grand larceny of the public fisc", being statutorily-violative, fraudulent, and unconstitutional for the multitude of reasons particularized by CJA's March 23, 2016 verified second supplemental complaint – and that it must be so-declared by any fair and impartial tribunal? If not, why not? Have you made findings of fact and conclusions of law, particularly with respect to the thirteenth, fourteenth, and fifteenth causes of action (§§385-457)? Do you not agree that the December 24, 2015 report violates a succession of Penal Law provisions, such as those specified in CJA's December 31, 2015 letter to then Westchester

County District Attorney DiFiore and repeated in CJA's January 20, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie, each exhibits to the March 23, 2016 verified second supplemental complaint and recited therein.

Thirdly, would you support legislative oversight hearings with respect to the above – and with respect to whether the 62 state district attorneys are, in fact, “fulfilling the state constitutional and statutory duties related to enforcement of the State Penal Law”? If not, why not? When, if ever, has the Legislature held oversight hearings, or otherwise engaged in oversight examination of the foregoing – and what were its findings of fact and conclusions of law based thereon? Or do you believe that the Legislature should not be discharging oversight responsibilities?

So that the Legislature may be guided accordingly as it moves into the last week of its session, with S.7408-A on the Senate floor calendar and A.10152-A in the Assembly Ways and Means Committee, please advise by Monday, June 13, 2016.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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914-421-1200

From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]

Sent: Wednesday, June 08, 2016 11:03 AM

To: 'farrelh@assembly.state.ny.us'; 'oaksR@assembly.state.ny.us'; 'speaker@assembly.state.ny.us'; Assembly Minority Leader Brian M. Kolb

Cc: 'freemanc@assembly.state.ny.us'; 'herricks@assembly.state.ny.us'; cyoung@nyssenate.gov; 'lkrueger@senate.state.ny.us'; 'flanagan@nyssenate.gov'; 'scousins@nyssenate.gov'; 'garvey@nyssenate.gov'; 'glavin@nyssenate.gov'; 'cburke@nyssenate.gov'; 'sacquario@nysac.org'; 'cherryb@co.schoharie.ny.us'; 'zugibet@co.rockland.ny.us'; 'gmccaffrey@co.livingston.ny.us'; 'Districtattorney@co.genesee.ny.us'; 'lfriedman@co.genesee.ny.us'

Subject: THE WRONG BILL A.10152-A -- state reimbursement of district attorney salary increases

TO: Assembly Ways & Means Committee Chair Farrell
Assembly Ways & Means Committee Ranking Member Oaks
Assembly Speaker Heastie
Assembly Minority Leader Kolb

This follows up my phone messages to your offices earlier this morning. A.10152-A, which was committed to the Assembly Ways & Means Committee, but not calendared for any committee meeting, must not be advanced.

It is the WRONG bill – just as is S.7408-A, with which it is identical. The RIGHT bill is one that severs the statutory link between district attorney and judicial salaries, retroactive to April 1, 2016 – thereby ending any need for reimbursement of the district attorney salary increases arising from the “force of law” judicial salary increases of the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation. As you know, the judicial salary increases are a “grand larceny of the public fisc”. My below e-mail to the Senate Finance Committee and Senate leadership furnishes the particulars – and requests legislative oversight hearings. It is also posted on CJA's webpage “Securing Legislative Oversight of D.A. Salaries --& of the D.A.s”, whose direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/leg-oversight-over-das.htm>. That is where this e-mail will be posted, as well.

In the interest of economy, I reiterate its content to you.

Thank you.

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From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Tuesday, June 07, 2016 9:17 AM
To: cyoung@nysenate.gov; 'lkrueger@senate.state.ny.us'; 'flanagan@nysenate.gov'; scousins@nysenate.gov; 'marchione@nysenate.gov'; kaminsky@nysenate.gov; 'valesky@nysenate.gov'; 'pboyle@nysenate.gov'; 'ritchie@nysenate.gov'; 'bonacic@nysenate.gov'
Cc: 'garvey@nysenate.gov'; 'glavin@nysenate.gov'; grelick@nysenate.gov; 'cburke@nysenate.gov'; sacquario@nysac.org; cherryb@co.schoharie.ny.us; zugibet@co.rockland.ny.us; gmccaffrey@co.livingston.ny.us; Districtattorney@co.genesee.ny.us; lfriedman@co.genesee.ny.us; 'Jessica Cherry'; latimer@nysenate.gov; loughran@nysenate.gov; mallison@nysenate.gov; 'wmurphy@nysenate.gov'

Subject: FOR DISTRIBUTION TO ALL SENATE FINANCE COMMITTEE MEMBERS: Today's Committee Meeting: S.7408-A -- state reimbursement of district attorney salary increases

**FOR DISTRIBUTION TO ALL SENATE FINANCE COMMITTEE MEMBERS –
TABLING, IF NOT VOTING DOWN, S.7408-A – STATE REIMBURSEMENT OF DISTRICT ATTORNEY SALARY INCREASES**

S.7408-A – on the calendar of today's 11:00 a.m. meeting of the Senate Finance Committee -- must be tabled, pending legislative oversight hearings – if not voted down, summarily.

The sole basis for the raise in district attorney salaries – for which S.7408-A would have the state pick up the tab from the counties – is the statutory link between district attorney salaries and judicial salaries set forth in Judiciary Law §183-a.

It is because of this statutory link that district attorney salaries in each of the 57 counties outside of New York City have risen by approximately \$30,000 since 2012 – making them the highest-paid elected officials in those counties, excepting judges. S.6408-A will now facilitate yet another increase of approximately \$30,000, with district attorney salaries becoming even more grossly disproportionate and out-of-wack with county salary levels.

There is NO evidence that district attorney salary levels, raised by reason of the statutory-link as recently as 2014, 2013, and 2012, are inadequate – or that they became inadequate at any time in the 12 year span from 1999 through 2011. Did any of the counties suffer from an insufficient pool of qualified district attorney candidates because of salary? Indeed, didn't incumbent district attorneys repetitively seek re-election, as for instance, current incumbents Onondaga County District Attorney William J. Fitzpatrick; Warren County District Attorney Kate Hogan; Orleans County District Attorney Joseph V. Cardone; Schenectady County District Attorney Robert Carney; Dutchess County District Attorney William Grady?

The solution is to repeal Judiciary Law §183-a, effective April 1, 2016. This would obviate the need for the state to reimburse the counties for the district attorney salary increases resulting from the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – the first of whose judicial salary increase recommendations, having the “force of law”, took effect April 1, 2016.

Certainly, too, repeal of Judiciary Law §183-a, retroactive to April 1, 2016, is further warranted because the Commission's December 24, 2015 report is a “grand larceny of the public fisc”, being statutorily-violative, fraudulent, and unconstitutional – as demonstrated, resoundingly, by CJA's March 23, 2016 verified second supplemental complaint in our citizen-taxpayer action against the Legislature, Governor, Attorney General and Comptroller. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm> -- and the

portions most relevant are ¶¶238, 241, 273-300, and the thirteenth, fourteenth, and fifteenth causes of action (¶¶385-457) pertaining to the Commission statute, the Commission's operations, and its report.

Should you have any doubt that the bill you should be voting on is one to repeal Judiciary Law §183-a, retroactive to April 1, 2016, the appropriate legislative committees must hold an oversight hearing on Judiciary Law §183-a, inviting testimony from the New York State Association of Counties (NYSAC) and the District Attorneys Association of the State of New York (DAASNY), among others.

Upon information and belief, in the many decades since Judiciary Law §183-a was enacted, the Legislature has never undertaken ANY oversight examination or hearing of it – nor held any oversight hearing as to whether the county district attorneys are, in fact, discharging their “state constitutional and statutory duties related to the enforcement of the State Penal Law” – an area of inquiry willfully and deliberately not examined by the conflict-ridden, district attorney-filled Commission to Investigate Public Corruption because, *inter alia*, the Commission knew it would require a claw-back of the salary increases that the district attorneys had obtained, *via* Judiciary Law §183-a, from the August 29, 2011 report of the Commission on Judicial Compensation – and prevent subsequent salary increases based thereon. The particulars of this are laid out in CJA's April 23, 2014 proposed verified complaint to intervene in the Legislature's declaratory judgment action against the Commission to Investigate Public Corruption. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/holding-to-account/4-23-14-osc-with-notice-to-produce.htm>.

As Senate Rule VIII, §4(c) and Assembly Rule IV, § 1(d) require legislative committees to engage in oversight, please consider this e-mail as the Center for Judicial Accountability's formal request for both oversight hearings.

Meantime, below is my May 31, 2016 e-mail entitled “Protecting County Taxpayers -- Repealing the Statutory Link between District Attorney & Judicial Salaries, Etc.”, addressed to Steven Acquario, Executive Director of the NYSAC –with a copy to its President William Cherry, as well as to Rockland County District Attorney Thomas Zugibe, President of DAASNY and one of the 10 district attorney members of the Commission to Investigate Public Corruption.

More to follow...

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Center for Judicial Accountability, Inc. (CJA)
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From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]
Sent: Tuesday, May 31, 2016 2:20 PM
To: 'sacquario@nysac.org'
Cc: 'cherryb@co.schoharie.ny.us'; 'zugibet@co.rockland.ny.us'; gmccaffrey@co.livingston.ny.us; Districtattorney@co.genesee.ny.us; 'lfriedman@co.genesee.ny.us'

Subject: Protecting County Taxpayers -- Repealing the Statutory Link between District Attorney & Judicial Salaries, Etc.

Dear Mr. Acquario,

Following up your return call to me on Thursday, May 26th, for which I thank you, here's the direct link to the March 23, 2016 second supplemental complaint in the Center for Judicial Accountability's 2014 citizen-taxpayer action, challenging the judicial salary increases – on which the district attorney salary increases rest: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>.

I am presently writing a letter to you and NYSAC President Cherry, requesting that NYSAC advocate for the Legislature's repeal of the statutory link between district attorney and judicial salaries – and for legislative oversight of the

Commission on Legislative, Judicial and Executive Compensation and its December 24, 2015 report. On the same subject, I will also be writing to New York State District Attorney Association President Zugibe -- who himself, or by his fellow 61 district attorneys, can easily furnish NYSAC with findings of fact and conclusions of law with respect to the March 23, 2016 second supplemental complaint and the record thereon.

Meantime, below is my self-explanatory April 12th e-mail to Livingston County Supervisors pertaining to the “unlawful, fraudulent, and unconstitutional district attorney salary increases” – a copy of I also sent to Livingston County District Attorney McCaffrey. Other correspondence – including the April 8, 2016 e-mail I sent to Genesee County District Attorney Friedman – is posted on CJA’s webpage: “HOORAY FOR THE COUNTIES! PUSH-BACK ON FOOTING THE BILL FOR THE D.A. PAY RAISES...” The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/county-opposition-to-da-salary-increases.htm>.

Thank you.

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From: Center for Judicial Accountability [<mailto:elena@judgewatch.org>]

Sent: Tuesday, April 12, 2016 3:02 PM

To: 'calsuper@frontier.net'; 'egott@co.livingston.ny.us'; 'conesussuper@town.conesus.ny.us'; 'will@geneseony.org'; 'knapp1@frontiernet.net'; 'supervisor@townoflima.org'; 'dlefeber@avon-ny.org'; 'supervisor@grovelandny.org'; 'townofleicestersupervisor@gmail.com'; 'chuckdipo@frontiernet.net'; 'dpmahus@frontiernet.net'; 'MerileeW@frontiernet.net'; 'doublemsch@msn.com'; 'springwatersuper@yahoo.com'; 'townsupervisor@townofwestsparta.org'; 'yorksupr@rochester.rr.com'; 'ben@livingstonnews.com'

Cc: cyoung@nysenate.gov; gallivan@nysenate.gov; 'NojayW@assembly.state.ny.us'; gmccaffrey@co.livingston.ny.us; billie@thebatavian.com; howard@thebatavian.com

Subject: Safeguarding the taxpayers of Livingston County from unlawful, fraudulent, and unconstitutional district attorney salary increases

Dear Livingston County Supervisors –

Thank you for serving Livingston County taxpayers by your opposition to this year’s \$30,000-plus district attorney salary increase -- reported by the *Livingston County News* in its today’s article, “*Defiant supervisors may challenge state on DA salary increase*”: <http://www.thelcn.com/lcn01/defiant-supervisors-may-challenge-state-on-da-salary-increase-20160412>.

I have already spoken with Ways and Means Committee Chairman Daniel Pangrazio and left a voice mail message for Board of Supervisors Chairman Eric Gott, alerting them to facts and law that will assist you in challenging the district attorney salary increase. Livingston County and the other counties throughout New York must NOT be liable for district attorney pay hikes resulting from the judicial salary increases recommended by the Commission on Legislative, Judicial and Executive Compensation – as those recommended judicial salary increases are statutory-violative, fraudulent, and unconstitutional.

Indeed, Livingston County taxpayers should demand to know, from their Albany legislators – Senator Catharine Young, who chairs the Senate Finance Committee and is a member of the Legislature’s Joint Budget Conference Committee; from Senator Patrick Gallivan, who is a member of the Senate Finance Committee and of the Legislature’s Joint Budget Subcommittee on “Public Protection” – and from Assemblyman William Nojay, who co-sponsored a bill to amend the statute that created the Commission on Legislative, Judicial and Executive Compensation --why they took NO action to protect the public from the Commission’s judicial salary increase recommendations that they knew to be statutorily-violative, fraudulent, and unconstitutional and why they ignored the vigorous efforts of our non-partisan,

non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), to secure legislative oversight and override. Is it because in a system of government with three co-equal branches, there is a necessary correspondence in the salaries of the constitutional officers of each of those branches, so that the higher judicial salaries are the higher legislative and executive salaries will be – and because the surest route to their pay raises was *via* a commission whose recommendations would have “the force of law”? Let them answer to the voters in this election year.

You can examine for yourself CJA's extensive correspondence to legislators – virtually all sent to Senator Young – as it is posted on CJA's website, www.judgewatch.org, accessible *via* the prominent center hyperlink “NO PAY RAISES FOR NEW YORK's CORRUPT PUBLIC OFFICERS: The Money Belongs to their Victims!”. Start with our January 15, 2016 letter to Temporary Senate President John Flanagan and Assembly Speaker Carl Heastie – whose enclosures include our December 31, 2015 letter to Westchester County District Attorney/Chief Judge Nominee Janet DiFiore and a 12-page statement of particulars as the statutory violations, fraud, and unconstitutionality of the Commission's judicial salary increase recommendations. The direct link to the webpage for the January 15, 2016 letter is here: <http://www.judgewatch.org/web-pages/judicial-compensation/2015/jan-15-2016-ltr-to-leg-leaders.htm>.

There was NO RESPONSE from ANY legislators – or from Chief Judge Nominee DiFiore. Nor did they respond to any of our succession of further correspondence: <http://www.judgewatch.org/web-pages/judicial-compensation/2015-no-pay-raises-menu.htm>. Consequently, on March 23, 2016, we were put to the burden of going to Court to void the Commission's judicial salary increases. Here's the link to our March 23, 2016 verified second supplemental complaint – part of our two-year-old citizen-taxpayer action to vindicate the public's rights with respect to the prior \$40,000 judicial salary increases, likewise statutorily-violative, fraudulent, and unconstitutional: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>. I direct your attention, in particular, to ¶¶238, 241, 273-300, and the thirteenth, fourteenth, and fifteenth causes of action (¶¶385-457) pertaining to the Commission on Legislative, Judicial and Executive Compensation and its statutorily-violative, fraudulent, and unconstitutional judicial salary increase recommendations – as these furnish all the evidence you need to uphold the rights of Livingston County taxpayers and taxpayers throughout the state against this year's district attorney salary increase – and against the next three years of district attorney salary increases, resulting from the Commission's December 24, 2015 report.

By copy of this e-mail to Senator Young, to Senator Gallivan, to Assemblyman Nojay, and to Livingston County District Attorney Greg McCaffney, let them respond to the factual and legal showing made by our December 31, 2015 letter to then Westchester County District Attorney/Chief Judge Nominee DiFiore, and made by our January 15, 2016 letter to Temporary Senate President Flanagan and Assembly Speaker Heastie, and further presented by the thirteenth, fourteenth, and fifteenth causes of action of our March 23, 2016 verified second supplemental complaint that the judicial salary increases – on which the district attorney salary increases are based – are statutorily-violative, fraudulent, and unconstitutional.

Based on the penal provisions cited by our December 31, 2015 and January 15, 2016 letters, their duty is to take steps to secure criminal prosecution of the seven members of the Commission on Legislative, Judicial and Executive Compensation and we specifically request that all four public officers do so.

Finally, here's the link to the video of my testimony before the Legislature three years ago, at its February 6, 2013 budget hearing, at which I testified as to the statutory tie between judicial salaries and district attorney salaries: http://nystateassembly.granicus.com/MediaPlayer.php?view_id=2&clip_id=327. I was relegated to the end – and you can find it at 7 hours, 20 minutes. Since then, I have not been permitted to testify at the Legislature's joint budget hearings – including this year with Senator Young's chairmanship of the Senate Finance Committee. I did, however, remind her – and such members of the Senate Finance Committee as she shared my e-mail – of the statutory link between judicial and district attorney salaries, as you can see from Question #23 of my February 2, 2016 transmittal of “Questions for Chief Administrative Judge Lawrence Marks”: <http://www.judgewatch.org/nys-2016-17-budget/questions/2-2-16-questions-for-chief-admin-judge-marks.pdf>.

I am available to answer questions, including under oath.

Finally, I have created a webpage to celebrate your good-government efforts and that of other county legislators in protecting the People of the State of New York from the HUGE larceny of the public fisc that has been taking place and which is in progress – and in achieving a responsible and responsive state government such as we do NOT presently have. It is entitled “Hooray for the Counties! Push-Back to Footing the Bill for the D.A. Raises”. Here’s the direct link: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/county-opposition-to-da-salary-increases.htm>.

Thank you.

Elena Sassower, Director
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