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June 10, 2020

TO: Westchester County District Attorney Anthony Scarpino

FROM: Elena Sassower, Director

RE: CORRUPTION COMPLAINT in support of grand jury inquiry, pursuant to Article I, §6 of the New York State Constitution, of Westchester County state legislators for “wilful misconduct in office”, including fraud and larceny with respect to their OWN legislative salaries & the Legislature’s OWN budget

WESTCHESTER COUNTY STATE LEGISLATORS

*Senate Majority Leader Andrea Stewart-Cousins – 35th Senate District

Senator Alessandra Biaggi, ESQ. – 34th Senate District
Senator Jamaal Bailey, ESQ. – 36th Senate District
Senator Shelley Mayer, ESQ. – 37th Senate District
Senator David Carlucci – 38th Senate District
Senator Peter Harckham – 40th Senate District

Assemblywoman Amy Paulin – 88th Assembly District
Assemblyman Gary Pretlow – 89th Assembly District
Assemblyman Nader Sayegh, ESQ. – 90th Assembly District
Assemblyman Steven Otis, ESQ. – 91st Assembly District
Assemblyman Thomas Abinanti, ESQ. – 92nd Assembly District
Assemblyman David Buchwald, ESQ. – 93rd Assembly District
Assemblyman Kevin Byrne – 94th Assembly District
Assemblywoman Sandra Galef – 95th Assembly District

* Legislator whose \$41,500 leadership stipend was preserved by the December 10, 2018 Report of the Committee on Legislative and Executive Compensation in recognition of the “significantly more work” and “additional duties” she is expected to perform.

Pursuant to Article I, §6 of the New York State Constitution, I hereby present, for inquiry by a Westchester County grand jury, the within summary of “wilful misconduct in office” by the above-named 14 Westchester County state legislators, elected and re-elected on November 6, 2018 for the 2019-2020 legislative session, for which indictments are mandated under penal law provisions including:

Penal Law §175.35: “Offering a false instrument for filing in the first degree”;

Penal Law §195.20: “Defrauding the government”;

Penal §190.65: “Scheme to defraud in the first degree”;

Penal Law §496.05 (“Public Trust Act): “Corrupting the government in the first degree”;

Penal Law §496.06 (“Public Trust Act): “Public corruption”;

Penal Law §155.42: “Grand larceny in the first degree”;

Penal Law §460.20: “Enterprise corruption”;

Penal Law §110.00: “Attempt to commit a crime”;

Penal Law §195: “Official misconduct”;

Penal Law §105.15: “Conspiracy in the second degree”;

Penal Law §20.00: “Criminal liability for conduct of another”.

SUMMARY

On July 15-16, 2019, I furnished Governor Cuomo, Lieutenant Governor Hochul, Attorney General James, and ALL 213 state legislators, *via* their 15 stipend-receiving legislative leaders, with a July 15, 2019 written NOTICE and substantiating analysis that the December 10, 2018 Report of the Committee on Legislative and Executive Compensation – on which their pay raises are based – was “a fraud on the People of the State of New York – and a larceny of their tax dollars”, violating a succession of penal laws, and that their duty was to void it, to return the pay raise monies they had already received, and to initiate criminal prosecutions of the Committee’s four members and abetting attorneys. Among these members, Comptroller DiNapoli, himself a beneficiary of the Report’s “force of law” salary increase recommendations.

None of the recipients denied or disputed the accuracy of CJA’s July 15, 2019 NOTICE and analysis, including the specified penal laws violated. Instead, on December 1, 2019, the highest of the 15 legislative leaders – Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie – delivered to the Governor an uncertified FY2020-21 legislative budget which, concealing that legislative salaries had been raised by the December 10, 2018 Report from \$79,500 to \$110,000 and that it had eliminated all legislative stipends other than for the 15 legislative leaders, sought \$2,713,038 more for legislative salaries and stipends than the Report entitled them.

Eight weeks after that, on January 21, 2020, Governor Cuomo publicly presented his FY2020-21 executive budget. Introduced by Lieutenant Governor Hochul, he spoke before an audience that included Temporary Senate President Stewart-Cousins, Assembly Speaker Heastie, Attorney

General James, and Comptroller DiNapoli, all of whom the Governor introduced as “great”. He lauded himself and them for performing their “duty”, specifying having “constitutionally passed the budget on time”. He concealed that the Committee on Legislative and Executive Compensation had been rigged, referring to it as an “independent commission” – and stated that he supported pay raises for the Legislature, as if legislators were not already beneficiaries of pay raises. Simultaneously, he released his appropriation bill for the legislative budget, without any accompanying recommendation that the Legislature correct the \$2,713,038 overage for legislative salaries and stipends.¹ Instead, in an out-of-sequence, mistitled section at the back of the bill, the Governor added 32 pages of supposed “reappropriations” for the Legislature – untallied, but seemingly totaling over \$100,000,000. Among them, “reappropriations” of legislative salaries and stipends from past years.²

On February 18, 2020, I testified about what was going on at a local budget hearing, presided over by Temporary Senate President Stewart-Cousins, who is my own state senator. My closing words were “These are penal law violations” – and the documents I handed up, in substantiation of my testimony, were:

- (1) provisions of the New York State Constitution pertaining to the fashioning and enactment of the state budget and the openness mandated for legislative proceedings – Article VII, §§1-7; Article IV, §7; and Article III, §10;
- (2) CJA’s July 15, 2019 NOTICE and analysis;
- (3) CJA’s February 12, 2020 written statement to the Legislature as to its failure to hold any budget hearing on its OWN budget or even to post it on its Senate and Assembly websites, and furnishing 47 questions to be answered by Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie about their uncertified December 1, 2019 FY2020-21 legislative budget and about the Governor’s January 21, 2020 appropriation bill for the Legislature;
- (4) CJA’s written statement for the Legislature’s February 12, 2020 budget hearing at which the Judiciary’s Chief Administrative Judge would be testifying, furnishing 50 questions for the Legislature to require him to answer about the Judiciary’s December 1, 2019 FY2020-21 budget and about the Governor’s January 21, 2020 appropriations bill for it – the same bill as for the Legislature.

¹ Particularized at Questions #15-#18 of CJA’s February 12, 2020 “Questions for Temporary Senate President Andrea Stewart-Cousins and Assembly Speaker Carl Heastie Concerning the Legislature’s Proposed Budget for Fiscal Year 2020-21 & the Governor’s Legislative/Judiciary Budget Bill #S.7501/A.9501”, *infra*, AND at pages 9-10 of CJA’s February 18, 2020 letter to Governor Cuomo, *infra*.

² Particularized at Questions #31-#37 of CJA’s aforesaid February 12, 2020 “Questions for Temporary Senate President Andrea Stewart-Cousins and Assembly Speaker Carl Heastie...” AND at pages 10-11 of CJA’s aforesaid February 18, 2020 letter to Governor Cuomo.

I also handed up copies of a February 18, 2020 letter I had written to Governor Cuomo, particularizing the fraud of the “simple numbers” he had touted at his January 21, 2020 executive budget address pertaining to the budgets of his “Partners in Government”: the Legislature, the Attorney General, the Comptroller, and the Judiciary – and identifying that two further letters would be forthcoming: one focused on the fraudulent, statutorily-violative, and unconstitutional December 10, 2018 Report of the Committee on Legislative and Executive Compensation and the other focused on the unconstitutionality of the Governor stuffing policy into his executive budget unrelated to fiscal matters and to any budget appropriations.

These two subsequent letters, dated March 3, 2020 and March 18, 2020, were sent to the Governor – and, simultaneously, to the 15 stipend-receiving legislative leaders. Neither they nor any other recipient of these two letters or of the February 18, 2020 letter denied or disputed their accuracy – or the accuracy of any of my correspondence to them, to the Senate Finance Committee, to the Assembly Ways and Means Committee, to other legislative committees, and to individual legislators concerning the larceny of taxpayer monies in the FY2020-21 budget, procured by a mountain of constitutional, statutory, and legislative rule violations. Yet none took corrective steps. To the contrary, they all went full-speed ahead in enacting a completely “OFF THE CONSTITUTIONAL RAILS”, slush-fund executive budget for FY2020-21, with all the complained-about larcenies retained, and whose brazen constitutional violations include its “three-men-in-a-room”, behind-closed-doors, deal-making finale between Governor Cuomo, Temporary Senate President Stewart-Cousins, and Assembly Speaker Heastie – and the deceit that the budget thereby produced is “on time” or “timely”.

Suffice to say that just in terms of pay raises, the cost to taxpayers, since 2012, when the first commission-based “force of law” salary increases began, which were for judges – and for district attorneys because their salaries, *though paid by the counties*, are statutorily-linked to judicial salaries – is about **HALF A BILLION DOLLARS**. Most of this amount is attributable to the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation. These are as fraudulent, statutorily-violative, and unconstitutional as the December 10, 2018 Report of the Committee on Legislative and Executive Compensation. All three are “false instruments”, as defined by Penal Law §175.35, and in virtually identical respects – and CJA’s March 3, 2020 letter highlights this (at p. 6), with the substantiating proof as to the August 29, 2011 and December 24, 2015 commission reports embodied in CJA’s declaratory judgment action and two citizen-taxpayer actions, each “thrown” by fraudulent decisions of New York judges financially interested in preserving their judicial pay raises and the larcenous, slush-fund Judiciary budget embedding them. The record of these three lawsuits, a perfect “paper trail” from which to indict and convict the constitutional officers of New York’s three government branches for “colluding to secure for themselves undeserved, unconstitutional pay raises by an unconstitutional commission scheme” – about which I gave DISPOSITIVE oral and written testimony before the Committee on Legislative and Executive Compensation at its November 30, 2018 hearing – is accessible from CJA’s webpage for that testimony. CJA’s July 15, 2019 analysis of the Committee’s December 10, 2018 Report furnishes the direct link at page 5, footnote 4.

* * *

The foregoing summary, hyperlinked to the evidence to which it refers, and this complaint, with links to the further evidence below cited, are posted on a webpage entitled “Invoking ‘The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments...’ pursuant to Article I, §6 of the New York State Constitution”. It is part of a series of webpages for the “2020 LEGISLATIVE SESSION”, accessible from CJA’s homepage, www.judgewatch.org, via its prominent center link “LEGISLATIVE SESSIONS – Comparing NY’s Legislature BEFORE & AFTER its Fraudulent Pay Raise”.³

For a more detailed overview of the pay raise issue, the best place to start is CJA’s March 3, 2020 letter, especially as it highlights why, based on CJA’s July 15, 2019 NOTICE and analysis and the Governor’s January 21, 2020 executive budget address, a grand jury would have ample evidence to find “wilful misconduct” pursuant to Article I, §6 of the New York State Constitution.⁴

Similar corruption complaints, based on the identical summary, are being filed with all 62 of New York’s district attorneys so that grand juries in each of New York’s 62 counties can take responsibility for their OWN state legislators. Not only are they pocketing larcenous pay raises for themselves based on the December 10, 2018 “force of law” committee report, but their identical wilful nonfeasance with respect to the “force of law” August 29, 2011 and December 24, 2015 commission reports and with respect to the out-of-date statutory link between judicial salaries and district attorney salaries has resulted, for 56 counties, in HUGE, completely unwarranted salary increases for district attorneys, *payable from county budgets*, whose consequence is that district attorneys have become the highest-paid county officers in most of the counties, by grossly disproportionate sums.⁵

³ The direct link to the “2020 LEGISLATIVE SESSION” webpage is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/2020-session-menu.htm> and to its “GRAND JURIES” webpage is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/grand-juries.htm>. The direct link to the “2019 LEGISLATIVE SESSION” webpage is here: <http://www.judgewatch.org/web-pages/searching-nys/2019-legislative/menu-2019-legislative-session.htm>.

⁴ The direct link to the webpage for the March 3, 2020 letter, from which all its referred-to evidence is accessible, is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-3-20-ltr-to-gov.htm>.

⁵ I testified, extensively, about the situation at the Legislature’s January 30, 2017 budget hearing on “local government officials/general government”, in the presence of Assemblyman Otis, a member of the Assembly Committee on Local Governments, then as now – and the situation has only grown worse because of the Legislature’s complete inaction. The direct link to the VIDEO of my MUST-SEE testimony is here: <http://www.judgewatch.org/web-pages/searching-nys/2017-legislature/1-30-17-budget-hearing.htm>. By the way, the [wikipedia entry for Westchester County](#) gives the following income figures:

“According to census data, the [per capita income](#) for the county in 1999 was \$36,726. The American Community Survey lists Westchester in 2011 with the median household income

The only materially different complaint is to Albany County District Attorney P. David Soares – and this is because his geographic jurisdiction encompasses the state capital and, therefore, extends to ALL 213 state legislators, as well as to Governor Cuomo, Lieutenant Governor Hochul, Attorney General James, Comptroller DiNapoli – and to the judges of the Albany-based New York Court of Appeals, Albany-based Appellate Division, Third Department, and Albany Supreme Court, who, in tandem with the Attorney General, corrupted the judicial process in CJA’s two citizen-taxpayer actions challenging the constitutionality and lawfulness of the budget, of the August 29, 2011 and December 24, 2015 commission reports, and of the “force of law” commission scheme.

The reason I am not filing a complaint with District Attorney Soares exclusively is because, for the past seven years, to advance his OWN interests, including his OWN district attorney pay raises resulting from the August 29, 2011 and December 24, 2015 commission reports, he has been “sitting on” FOUR corruption complaints I filed with him, dated July 19, 2013, January 7, 2014, June 21, 2016, and March 6, 2018,⁶ each furnishing him with a mountain of *prima facie*, open-and-shut evidence upon which to indict and convict New York’s highest constitutional officers in all three government branches, along with scores of other constitutional and public officers and their staff, for public corruption involving the “force of law” commission pay raise scheme, the budget – and the obliteration of any cognizable judicial process in CJA’s two citizen-taxpayer actions and, prior thereto, in CJA’s declaratory judgment action and in its motion to intervene in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption, depriving the People of the State of New York of their entitlement to summary judgment, on all causes of action, *as a matter of law*, proven by the record of each lawsuit.

of \$77,006, the 47th highest in the country. The [U.S. Census Bureau](#) reports that 6.4% of families and 8.7% (2003) of the population were below the [poverty line](#), including 26.53% of those under age 18 and 7.60% of those age 65 or over.”

⁶ As District Attorney Soares is running for re-election this year, I have aggregated the four corruption complaints he has been “sitting on” on a webpage entitled “Elections 2020: Holding Albany County District Attorney P. David Soares Accountable”. It is part of a series of webpages, accessible from CJA’s homepage link: “ELECTIONS 2020 – Taking Out Corrupt & Collusive Legislative Incumbents & Conspiring D.A.s – All Beneficiaries of Statutory-Violative, Fraudulent, Unconstitutional Pay Raises & Other Larcenies of Taxpayer Monies”. The direct link is here: <http://www.judgewatch.org/web-pages/elections/2020/district-attorney-soares.htm>.

A postscript is in order. When the four complaints were filed, the chief of District Attorney Soares’ so-called “Public Integrity Bureau” was Assistant District Attorney Eric Galarneau. In November 2019, he was appointed to a Cohoes City Court judgeship, effective January 1, 2020. He thereby became a direct beneficiary of the fraudulent judicial pay raises resulting from the August 29, 2011 and December 24, 2015 commission reports that were the subject of the complaints he “sat on” – an approximately \$70,000 a year salary boost.

Kindly confirm that you will be forwarding this corruption complaint against Westchester County's 14 state legislators to a Westchester County grand jury for its inquiry pursuant to Article I, §6 of the New York State Constitution, with my request to testify before it and to be questioned, under oath. Of course, preliminarily, I am available to be interviewed by you and/or your deputy and assistant district attorneys, under oath, as to my specific interactions and communications with the complained-against Westchester County state legislators – and to supply originals/copies of relevant documents bearing on their crimes. Among the most important of these:

- (1) Temporary Senate President Andrea Stewart-Cousins, with whom my communications are particularly extensive because she is, additionally, my own senator and because, prior to assuming her preeminent position as Senate Majority Leader in January 2019, she was Senate Minority Leader, a position she held since January 2013;
- (2) Commission on Government Administration Chair & sole member David Buchwald, ESQ., with whom my communications, from the time he first joined the Assembly in January 2013, are particularly extensive, as he is my own state assembly member who, throughout the years, was, as he still is, a member of the Assembly Judiciary Committee, Assembly Committee on Government Operations, Assembly Committee on Local Governments, and Assembly Election Law Committee;
- (3) Former Commission on Government Administration Chair & sole member Thomas Abinanti, ESQ., now chair of the Assembly Committee on Oversight, Analysis and Investigation and a member of the Assembly Judiciary Committee and Assembly Codes Committee;
- (4) Senate Committee on Ethics and Internal Governance Chair Alessandra Biaggi, ESQ., a member of the Senate Committee on Investigations and Government Operations and Senate Codes Committee;
- (5) Senator David Carlucci, a member of the Senate Committee on Investigations and Government Operations;
- (6) Senator Shelley Mayer, ESQ., a member of the Senate Committee on Corporations, Authorities and Commissions and the Senate Committee on Elections and who, prior to her special election to the Senate in April 2018, was chair of the Assembly Committee on Oversight, Analysis and Investigation;
- (7) Assembly Committee on Corporations, Authorities and Commissions Chair Amy Paulin, whose committee membership includes Assemblyman Buchwald, Assemblywoman Galef, and Assemblyman Otis;

(8) Assemblyman Steven Otis, ESQ., a member of the Assembly Committee on Local Governments, together with Assemblyman Buchwald.

As Westchester County's 14 state legislators are all now running for re-election or for election to Congress, expedition is essential. Westchester County voters are entitled to know how flagrantly their state legislators betrayed them and colluded in the theft of taxpayer monies, including for their OWN salaries and by the Legislature's OWN budget. The evidence with respect to this complaint is *prima facie* and open-and-shut – requiring that ALL be indicted. Indeed, ALL will be convicted because, at very least, when they swore to uphold the New York State Constitution, as they each did on January 9, 2019 in taking their oaths of office for the 2019-2020 legislative session, they are presumed to have read its provisions. Illustrative is Article VII, §4 of the New York State Constitution – quoted at page 2 of CJA's March 18, 2020 letter – from which any competent legislator would know that New York has a rolling budget, with appropriation bills – other than for the Legislature and Judiciary – becoming “law immediately” upon the Senate and Assembly reconciling their separate amendments to the bills, limited to strike-outs and reductions of items. Nothing remotely resembling this took place in the 2019 legislative session or in the 2020 legislative session – repeating what is chronicled by the record of CJA's two citizen-taxpayer actions with respect to the 2013 legislative session, the 2014 legislative session, the 2015 legislative session, the 2016 legislative session, the 2017 legislative session, and the 2018 legislative session.

Like the state legislators here complained against, you took the same oath of office prescribed by Article XIII, §1 of the New York State Constitution, to “support the constitution of the United States, and the constitution of the State of New York, and ...[to] faithfully discharge the duties of the office of...”. Indeed, Article XIII, §13(b) puts you in charge of its adherence, on pain of your own removal, stating:

“Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defense...”

Needless to say – and this is threshold – if you are unable to impartially discharge your duties to enforce the penal law and Article XIII, §1 and Article I, §6 of the New York State Constitution with respect to this complaint because of relationships with the complained-against legislators or other interests, you must recuse yourself and take steps to secure appointment of a special prosecutor.⁷ In

⁷ See, National Prosecution Standards of the National District Attorneys Association, Section 1-3.3“Specific Conflicts”, subdivision (d):

“The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.”

that regard, isn't it true that you simply ignored the January 8, 2018 complaint I filed with you seeking prosecution of those engaged in "'Grand Larceny of the Public Fisc' Arising from the Two State Commission Reports on which Your Larcenous District Attorney Salary Rests"?'⁸ 11 of the 14 current state legislators were subjects of that complaint.

I await your expeditious response. Meantime, this complaint and the complaints to your fellow 61 district attorneys will be disseminated to the complained-against state legislators, the candidates running to replace them, and the press. The soundbite, in three sentences, is, as follows:

- (1) the legislators are NOT doing their jobs of oversight and law-making, resulting in a Legislature that is sham and NOT operating at a constitutional level;
- (2) the legislators are stealing our money by slush-fund budgets that are "OFF THE CONSTITUTIONAL RAILS", rife with constitutional, statutory, and legislative rule violations;
- (3) the legislators have rewarded themselves with PAY RAISES FOR THEIR CRIMES, procured by a December 10, 2018 report they know to be a "false instrument" (Penal Law §175.35).

Section 1-3.5 "Special Prosecutors":

"Where an actual or potential conflict of interest exists that would prevent the prosecutor's office from investigating or prosecuting a criminal matter, the prosecutor's office should appoint, or seek the appointment of a 'special prosecutor,' or refer the matter to the appropriate governmental authority as required by law...."

Section 1-3.4 "Conflict Handling":

"Each prosecutor's office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

- ...
- b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor's office."

⁸ The January 8, 2018 complaint is accessible from the webpage for this grand jury/corruption complaint, *via* the link: "Showcase of *ALREADY-DEMONSTRATED* District Attorney Conflicts of Interest". The direct link to the webpage for the complaint – the same as it was when the complaint was hand-delivered to your office – is here: <http://www.judgewatch.org/web-pages/elections/2017/jan-8-2018-complaint.htm>.

Grand juries – and voters – will have no difficulty in understanding this – and I have created a “Background Primer” to further assist. The direct link is here: <http://www.judgwatch.org/web-pages/searching-nys/district-attorneys/primer-for-grand-juries.htm>.

Finally, I hereby acknowledge the “NOTICE”, appearing twice on your complaint form, whose more expanded version, in its second appearance, is, as follows:

“NOTICE: PURSUANT TO THE PENAL LAW, SECTION 210.45, IT IS A CRIME PUNISHABLE AS A CLASS ‘A’ MISDEMEANOR TO KNOWINGLY MAKE A FALSE STATEMENT IN THIS COMPLAINT OR IN ANY DOCUMENT SUBMITTED WITH THIS COMPLAINT.”

I hereby swear, under penalties of perjury, that my above complaint and its referred-to evidentiary proof is all true – and, further, that I will rectify my failure to have filed my January 8, 2020 corruption complaint with the Grievance Committee for the Ninth Judicial District, as I there stated I would do, against you and the public officers therein indicated who are lawyers.⁹

Thank you.

⁹ Such will now specifically include a complaint against your former First Deputy District Attorney James McCarty, who – in June 2018 – was appointed and confirmed to the Court of Claims, thereby even more directly benefitting, by a hiked judicial salary, from the fraudulent August 29, 2011 and December 24, 2015 commission reports that were his duty to investigate and take action against, upon my correspondence to him in the summer of 2016, when he was the Acting District Attorney – and which, upon my communications to you, from October 23, 2017 onward, became your duty.