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Written Testimony of Center for Judicial Accountability Director Elena Sassower for the NYS Legislature’s February 15, 2023 Budget Hearing on “Local Government Officials/General Government”

In my [written testimony for the Legislature’s February 7, 2023 budget hearing on “Public Protection”](#),¹ I stated:

“Andrew Cuomo may be gone as governor..., but Governor Hochul’s executive budget, with its included legislative and judiciary budgets, is just as flagrantly unconstitutional and rife with unlawfulness, fraud, and larceny. Thus far, the Legislature’s response has been of the same ilk. ...”

With respect to the legislative budget, here are some substantiating particulars – and questions.²

Until the Legislature puts its “own house in order” as to its own budget and the operations it enables and disables, it cannot do the heavy lifting of scrutinizing the budgets and operations of other entities of government. Nor is it now doing so constitutionally or appropriately. Thus far, the FY2023-24 state budget is as flagrantly “OFF THE CONSTITUTIONAL RAILS” as prior state budgets and, by its politics-driven inclusion of massive amounts of non-fiscal/non-revenue-producing policy, accelerates the replacement of constitutionally-enacted laws relating to state governance with laws

¹ In addition to the hyperlinks herein, CJA’s webpage for this testimony also aggregates the hyperlinks and other EVIDENCE, such as CJA’s comparable questions pertaining to:

- (1) the [FY2016-17 legislative budget and Governor Cuomo’s legislative/judiciary appropriation bill](#);
- (2) the [FY2017-18 legislative budget and Governor Cuomo’s legislative/judiciary appropriation bill](#);
- (3) the [FY2019-20 legislative budget and Governor Cuomo’s legislative/judiciary appropriation bill](#).

The direct link to the webpage is [here](#).

² As reflected by [my February 7, 2023 testimony](#), CJA has sued the Legislature in a succession of lawsuits for the unconstitutional, fraudulent, and larcenous fashion in which it operates. The records of these four lawsuits – and of CJA’s intervention in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption – each a “perfect paper trail”, evidence the identical *modus operandi*: the Attorney General had NO legitimate defense, corrupted the judicial process with litigation fraud, and was rewarded by fraudulent judicial decisions. The most recent of these lawsuits, [CJA v. JCOPE, et al.](#), commenced by a [June 6, 2022 verified petition](#), is STILL LIVE. Six of its ten causes of action pertain to the corruption of state “public protection”/ethics entities, funded in the budget. Four causes of action specifically relate to the budget, and the culminating tenth cause of action pertains to the unconstitutionality and unlawfulness of the Legislature’s closed-door party conferences, substituting for discussion in open legislative committees and on the Senate and Assembly floor.

not constitutionally-enacted. What a catastrophe.

Legislative Budget for FY 2023-2024

As in past years, there is NO budget hearing at which the Temporary Senate President and Assembly Speaker – or anyone on their behalf – are testifying in support of the Legislature’s own budget. Nor do the Legislature’s “color books” furnish ANY analysis of it.

The [Senate Majority “Blue Book”](#) and [Senate Minority “White Book”](#) do not appear to mention the Legislature’s budget, at all. The [Assembly Majority’s “Yellow Book”](#) includes the Legislature’s budget in a table (at p. 16) showing the “Recommended” appropriation for FY2023-24 as \$265,391,263 – a figure that does NOT appear in the Legislature’s budget that Temporary President Senate Stewart-Cousins and Assembly Speaker Heastie transmitted to Governor Hochul under a [December 1, 2022 coverletter](#), Its page 1 “Legislative Budget Highlights” states:

“The recommended General Fund appropriation of \$273,921,877 for FY 2023-24 for the Legislature, represents an increase of \$9,803,550 from the amount appropriated in FY 2022-23...”

This is the same figure as appears in its page 6 “ALL FUNDS REEQUIREMENTS FOR THE LEGISLATURE” chart.

As for the [Assembly Minority’s “Green Book”](#), it is the only one to include the Legislature in its table of contents. The skeletal information it furnishes, on a single page combined with the Judiciary (at p. 189), identifies the appropriation for the Legislature as “\$273.9 million...\$9.8 million more than last year” – in other words, rounding the figures in the Legislature’s budget and NOT giving the \$265,391,263 figure of the Assembly Majority’s Yellow Book”.

To assist legislators and the Legislature’s “appropriate committees” in discharging their duties with respect to the Legislature’s own budget, herewith are questions to ask Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie about their legislative budget – and about the 38 pages of legislative reappropriations that were not part of their FY2023-24 legislative budget but which have popped into Governor Hochul’s combined [Legislative/Judiciary Appropriation Bill #S.4001/A.3001](#) in an out-of-sequence, mistitled section at the back (pp. 37-75).

* * *

**Questions that Legislators & “Appropriate Committees”
Should be Asking Temporary Senate President Stewart-Cousins
& Assembly Speaker Heastie about their FY2023-24 Legislative Budget
& Governor Hochul’s Legislative/Judiciary Appropriation Bill #S.4001/A.3001**

(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 December 1, 2022 coverletter to Governor Hochul](#), 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 2023-2024 fiscal year, pursuant to Article VII, Section 1 of the New York State Constitution.”

In so doing, you did not purport that your “[a]ttached...Legislature’s Budget” was “Itemized estimates of the financial needs of the legislature”, or that you were certifying it right?

(3) Your attached budget consisted of 17 pages: a four-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 11 pages bearing no title, but which, prior to the FY2020-21 legislative budget, had been titled “Schedule of Appropriations”. Was that title inadvertently dropped from your FY2023-24 legislative budget – and from your prior three legislative budgets for [FY2022-23](#), [FY2021-22](#), and [FY2020-21](#)? Or was there some other reason?

(4) Would you agree that the 17 pages of your FY2023-24 legislative budget do not include a certification, make no reference to “itemized estimates” of the Legislature’s “financial needs”, and do not refer to Article VII, §1?

(5) Isn’t the reason you did not certify the Legislature’s budget to be “Itemized estimates of the financial needs of the legislature” is because it is not?

(6) Where are the Legislature’s FY2023-24 “general state charges”, *to wit*, the “fringe benefits” that are pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees? How much are they – and did you certify them to be “itemized estimates” of the Legislature’s “financial needs” with respect thereto?

(7) Shouldn’t the Legislature’s “general state charges” be part of its budget – just as the Judiciary’s “general state charges” are part of the [Judiciary’s budget](#), “approved by the court of appeals and certified by the chief judge of the court of appeals”, as Article VII, §1

requires.

- (8) Can you explain why neither the [Senate](#) nor [Assembly](#) websites post the Legislature's budgets that you and your predecessors have transmitted to the Governor, pursuant to Article VII, §1 -- unlike the Judiciary which has a [webpage](#) for the "approved...and certified" "itemized estimates of [its] financial needs" transmitted to the Governor pursuant to Article VII, §1?
- (9) Do you agree that Article VII, §1 does not vest you with the power to determine the "Itemized estimates of the financial needs of the legislature", but only to certify same?
- (10) 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 and/or approved the "itemized estimates" that the "presiding officer of each house" certify?
- (11) 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 or approve the Legislature's budget – or are there other "appropriate committees", as, for instance, the Senate Rules Committee; the Assembly Rules Committee, the Senate Committee on Ethics and Internal Governance, the Assembly Committee on Ethics and Guidance, the Assembly Committee on Oversight, Analysis, and Investigation?
- (12) Describe the "process", if any, by which the Legislature's budget for fiscal year 2023-2024 was compiled?
- (13) Wouldn't the process of compiling "Itemized estimates of the financial needs of the legislature" require soliciting the Legislature's 213 members – and its committees, commissions, and task forces through which your budget narrative (at p. 2) purports the Senate and Assembly operate?³
- (14) Were legislators and legislative committees, commissions, and task forces solicited as to their "itemized estimates" of their "financial needs"?

³ "The Senate conducts its legislative business through the operation of 47 Standing Committees, Commissions, and Task Forces."; "The Assembly conducts its legislative business through the operation of 37 standing committees."

- (15) Can you explain why the Assembly Ways and Means Committee is the only legislative committee for which appropriations are included in the Legislature’s budget (at pp. 3, 6, 9-10). Why aren’t appropriations for the Senate Finance Committee comparably included – and are they the same amount: \$6,896,281? What about all the other Senate and Assembly committees? Don’t they require adequate funding and staffing to operate professionally, discharging their lawmaking and oversight functions?
- (16) Why is the [Independent Redistricting Commission](#) included in the Legislature’s FY2023-24 budget – just as it was, for the first time, in the [Legislature’s FY2022-23 budget](#). And can you explain why two years ago, for FY2021-22, the behind-closed-doors “three people in a room” – of which you were two – popped a \$4,000,000 appropriation for the Independent Redistricting Commission into its [March 30, 2021 and April 3, 2021 amendings of the legislative portion of the Legislative/Judiciary appropriation bill](#), moving it from the [State Operations appropriation bill](#), where Governor Cuomo had originally placed it.⁴
- (17) Since redistricting is every ten years, can you explain why the FY2023-24 appropriation for the Independent Redistricting Commission is back to the \$4,000,000 figure it was in FY2021-22 – represented, at page 1 of your budget narrative, as being “a restoration...to a full fiscal year of activity”.
- (18) How was the \$4,000,000 calculated as being needed for FY2023-24, considering, in the [FY2022-23 Legislative/Judiciary appropriation bill](#) (at p. 63), there was a whopping \$2,641,106 left over for “reappropriation” from the FY2021-22 appropriation of \$4,000,000.
- (19) Why, since the [FY2023-24 Legislative/Judiciary appropriation bill](#) (at pp. 71-72) contains \$2,838,050 left over for “reappropriation” from FY2021-22 and FY2022-23, were those reappropriated funds not deducted from the \$4,000,000 needed for the Independent Redistricting Commission for FY2023-24, if it was actually needed.
- (20) Why does the Legislature’s budget include, as a “joint entity”, the [Commission on Long Island Power Authority](#) – codified in [Legislative Law Article 5-A, §83-n](#) – but not the 12 other commissions listed by [Legislative Law Article 5-A](#), whose memberships, likewise, consist exclusively of Senate and Assembly members who you appoint. And what about the single commission established by [Legislative Law Article 5-B: the administrative regulations review commission](#), whose membership, exclusively of Senate and Assembly members, is also appointed by you? What is your definition of “joint entities”?

⁴ The [Independent Redistricting Commission](#), established by a 2014 constitutional amendment, states, as follows in what is now [Article III, §5-b of the State Constitution](#):

“The state budget shall include necessary appropriations for the expenses of the independent redistricting commission...”

- (21) Other “joint entities” that you have included in the Legislature’s budget are the [Legislative Task Force on Demographic Research and Reapportionment](#), codified by [Legislative Law Article 5-A, §83-m](#), and the [Legislative Ethics Commission](#), codified by [Legislative Law Article 5 \(§80\)](#). Both have memberships NOT exclusively of Senate and Assembly members, although all appointed by you, correct?
- (22) What is the reason you did not include, as a “joint entity” the [Law Revision Commission](#), codified by [Legislative Law Article 4-A](#)? Is it because, although the four chairs of the Senate and Assembly Judiciary and Codes Committees are *ex officio* members, five members are appointed by the Governor? If so, why does the Legislature’s budget not reflect a split in costs with the Governor, just as is done with the Office of Lieutenant Governor, so-identified by your budget narrative (at pp. 1, 2).
- (23) Can you explain why – considering the omission from the Legislature’s budget of most “joint entities”—indeed, most of the components of the Legislature – you include the Legislative Health Service, the Legislative Library, and the Legislative Messenger Service, as if these and dues for the National Conference of State Legislatures, which you also include, are significant.
- (24) As for the Legislative Ethics Commission, included among your few listed “joint entities”, can you explain why your budget narrative (at p. 3) makes it appear that it is operating with “four legislators and five non-legislative members, when, as you know, it has not been operating with [a non-legislative ninth member](#) since its inception, and why, in the same narrative (at p. 3) you refer to the Joint Commission on Public Ethics”, which, as you know, you eliminated *via* the budget, last year, by your behind-closed-doors, “three people in the room” amending of budget bills, replacing it with the Commission on Ethics and Lobbying in Government. Is there nobody on your staff who “proofed” the Legislature’s budget for such inaccuracies?
- (25) Why, too, does your budget narrative (at p. 2) use outdated figures that “Each Senator represents approximately 308,000 constituents.” and “Each Member of the Assembly represents approximately 129,000 constituents.” Aren’t these rounded figures from 2010 that should be replaced by 2020 figures, readily available, including from [Ballotopedia](#), listing the 2020 figure for the Senate as 320,655, up from 307,589 in 2010, and the 2020 figure for the Assembly as 134,675, up from 129,187 in 2010.
- (26) Do you agree that more than half of the Legislature’s barely 17-page budget is devoted to the handful of “joint entities” it features as if they were all “joint entities” and whose cumulative appropriations, listed on the page 6 chart, is \$22,924,741 – in other words, well less than 10% of the \$273,921,877 “GENERAL FUND TOTAL”, also listed on that chart.
- (27) Do you agree that most of the over 90% balance of legislative appropriations are under the headings “The Senate” and “The Assembly” – and that with the exception of “salaries” and “allowances” for Senate and Assembly members, they lack sufficient itemization for

intelligent, meaningful review?

- (28) Can you explain why the first item of “Personal Service” for the Senate is – with underlining here added:

“For payment of salaries to members, 63,
pursuant to section five of the legislative law.....\$6,930,000”

and the first item of “Personal Service” for the Assembly is – with underlining here added:

“Members, 150, payment of salaries
pursuant to Section five of the legislative law.....\$16,500,000”

when each of these cumulative salary amounts reflect, for each member, a salary of \$110,000 – and such was pursuant to [the December 10, 2018 report of the Committee on Legislative and Executive Compensation](#), which superseded Legislative Law §5.

- (29) Can you explain why the second item of “Personal Service” for the Senate reads:

“For payment of allowances to members designated by
the temporary president, pursuant to the schedule of
such allowances set forth in section 5-a of the legislative law....\$1,289,500”

and the second item of “Personal Service” for the Assembly reads:

“For payment of allowances to members designated by
the speaker pursuant to the provisions of section 5-a of
the legislative law.....\$1,592,500”

when the [December 10, 2018 report of the Committee on Legislative and Executive Compensation](#) superseded [Legislative Law §5-a](#) and eliminated all but 15 of the Legislative Law §5-a allowances. Shouldn’t the listed figures have been \$185,000 for the Senate and \$239,500 for the Assembly?⁵

⁵ These are the six allowances in the Senate, whose total cost is \$185,000: (1) for the Temporary Senate President (\$41,500); (2) for the Deputy Majority Leader (\$34,000); (3) for the Minority Leader (\$34,500); (4) for the Deputy Minority Leader (\$20,500); (5) for the Finance Committee Chair (\$34,000); and (6) for the Finance Committee Ranking Member (\$20,500). And the nine allowances in the Assembly, whose total cost is \$239,500: (1) for the Assembly Speaker (\$41,500); (2) for the Assembly Majority Leader (\$34,500); (3) for the Speaker *Pro Tempore* (\$25,000); (4) for the Minority Leader (\$34,500); (5) for the Minority Leader *Pro Tempore* (\$20,500); (6) for the Ways & Means Committee Chair (\$34,000); (7) for the Ways & Means Committee Ranking Member (\$20,500); (8) for the Codes Committee Chair (\$18,000); (9) for the Codes Committee Ranking Member (\$11,000).

- (30) The legislative budget that your December 1, 2022 coverletter transmitted to the Governor contained no legislative reappropriations, correct?
- (31) Do you agree that when Governor Hochul combined the Legislature’s budget with the Judiciary’s budget in her [February 1, 2023 Legislative/Judiciary budget bill #S.4001/A.3001](#), she was able to conceal 38 pages of legislative reappropriations (pp. 37-74) that were not part of your December 1, 2022 transmittal to her?
- (32) Do you agree that these 38 pages of legislative reappropriations are – as reflected by the end-page Table of Contents for Legislative/Judiciary Budget Bill #S.4001/A.3001 (p. 75) – in an out-of-sequence section at the back of the bill? And shouldn’t the first page of these 38 pages (p. 37) be prominently marked “Reappropriations”, just as the first page of the Judiciary’s “Reappropriations” is (p. 25)?
- (33) Can you explain where the 38 pages of legislative reappropriations (pp. 37-74) came from?
- (a) When and in what fashion were they transmitted to the Governor?;
 - (b) Did you certify the dollar amounts of these legislative reappropriations and, additionally, that they were suitable for designation as reappropriations?;
 - (c) Are the purported “reappropriations” in fact suitable for reappropriation considering the definition of “reappropriation” posted on the [Division of the Budget’s website](#): “a legislative enactment that continues all or part of the undisbursed balance of an appropriation that would otherwise lapse (see lapsed appropriation). Reappropriations are commonly used in the case of federally funded programs and capital projects, where the funding amount is intended to support activities that may span several fiscal years.”
 - (d) What is the cumulative total of these 38 pages of legislative reappropriations?
 - (e) What is the tally of each section of legislative reappropriations – and why was this amount not deducted from the corresponding appropriations for each entity and/or why did the availability of reappropriations not obviate the need for any 3% increases from FY2022-23:
 - (i) Senate: pp. 39-40;
 - (ii) Assembly: pp. 40-43;
 - (iii) Ways & Means (pp. 43-44);
 - (iv) Senate & Assembly Joint Entities (pp. 44-72):
 - Legislative Ethics Commission (pp. 44- 48);
 - National Conference of State Legislatures (pp. 48-49);
 - Legislative Health Service (pp. 49-52);

Legislative Library (pp. 52-55);
Legislative Messenger Service (pp. 55-58);
Legislative Bill Drafting Commission (pp. 59-60);
Demographic Research/Reapportionment Task Force (pp. 61-71);
Independent Redistricting Commission (pp. 71-72);
Commission on LI Power Authority (p. 72).

(v) Special Revenue Funds-Other

Computer Services Fund (pp. 72-73);
Recyclable Materials; Info Services & Conference (p. 74).

- (34) Can you explain why Legislative/Judiciary Appropriation Bill #S.4001/A.3001 has reappropriations for the Legislative Ethics Commission, but, by comparison, [State Operations Appropriations Bill #S.4000/A.3000](#) has NO reappropriations for
- (i) the Commission on Ethics and Lobbying in Government (at p. 200);
 - (ii) the State Inspector General (at pp. 442-444);
 - (iii) the Commission on Judicial Conduct (at p. 446);
 - (iv) the Commission on Prosecutorial Conduct (at p. 573)?
- (35) Governor Hochul’s [Legislative/Judiciary Appropriation Bill #S.4001/A.3001](#) 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. 1-10) and reappropriations in its §4 (pp. 37-74)?
- (36) Is it concerning to you that none of the glaring deficiencies, inconsistencies, and inaccuracies of the Legislature’s FY2023-24 budget, such as hereinabove summarized, were made the subject of “recommendations” by Governor Hochul, pursuant to [Article VII, §1 of the New York State Constitution](#), requiring that the “Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house” be included in the state budget “without revision but with such recommendations as the governor may deem appropriate”.
- (37) Can you explain why the Senate and Assembly “colorbook” analyses of the FY2023-24 budget either contain no inclusion, at all, of the Legislature’s budget, or no analysis thereof?
- (38) Would you be willing to publicly give your answers to the above questions pertaining to your [FY2023-24 legislative budget](#) and [Legislative/Judiciary Appropriation Bill #S.4001/A.3001](#) at a legislative hearing on the Legislature’s own budget and, if not, why?