

## CENTER for JUDICIAL ACCOUNTABILITY, INC.\*

Post Office Box 8101  
White Plains, New York 10602

Tel. (914)455-4373

E-Mail: [cja@judgewatch.org](mailto:cja@judgewatch.org)  
Website: [www.judgewatch.org](http://www.judgewatch.org)

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 6<sup>th</sup>, by the primary-source materials posted on our website, [www.judgewatch.org](http://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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\* **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.

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 22<sup>nd</sup> 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 24<sup>th</sup> and March 26<sup>th</sup>;
- (3) CJA’s March 28<sup>th</sup> 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 28<sup>th</sup> 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 24<sup>th</sup> letter to Senators entitled “Why You Must Reject S.2601: The Appropriations Bill for the Judiciary”, which, on March 26<sup>th</sup>, we replicated, essentially *verbatim*, for our letter to Assembly Members pertaining to A.3001. Also, a must-read, CJA’s March 11<sup>th</sup> letter, summarizing and elaborating upon my testimony at the Legislature’s February 6<sup>th</sup> budget hearing on “public protection” – a copy of which we enclosed with our March 19<sup>th</sup> 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 19<sup>th</sup> 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 24<sup>th</sup>



/26<sup>th</sup> 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.

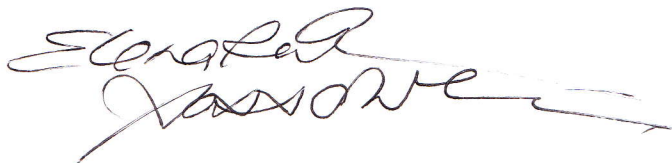
As legislators and legislative staff do receive ‘fringe benefits’ – ‘pension contributions, Social Security, health, dental vision and life insurance’, etc. – the absence in S.2601/A.3001 of ‘General State Charges’ for the Legislature renders the bill materially incomplete and constitutes a further ground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