

CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101
White Plains, New York 10602

Tel. (914)421-1200

E-Mail: mail@judgewatch.org
Website: www.judgewatch.org

March 19, 2018

TO: New York State Comptroller Thomas DiNapoli
ATT: Records Access Officer Jane Hall

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: FOIL/RECORDS REQUEST: “*No Lulus for You: Comptroller Threatens to Withhold Lawmakers’ Payments*”, New York Times, March 16, 2018 (Jesse McKinley)

Reference is made to a March 16, 2018 news article by New York Times reporter Jesse McKinley, “*No Lulus for You: Comptroller Threatens to Withhold Lawmakers’ Payments*”: <https://www.nytimes.com/2018/03/16/nyregion/lulus-albany-state-senate-false-titles.html> – a copy of which is annexed for your convenience.

Such article refers to “so-called Senate certifications falsely listing five senators...as chairmen or chairwomen of Senate committees” – to which the Comptroller responded by “a March 9, 2018 letter”.

The article states:

“The letter from Mr. DiNapoli’s office and other documents about the stipends were obtained through a Freedom of Information request. In a statement, a spokeswoman for the comptroller, Jennifer Freeman, said the office had issued the letter since ‘legal entitles have yet to clarify the legality of the Senate’s practices,’ after they were brought to light last year.”

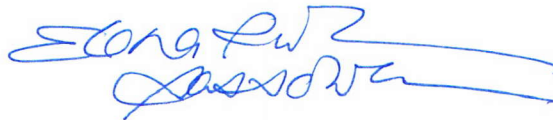
Pursuant to Public Officers Law, Article VI, “Freedom of Information” (FOIL), request is made for:

- (1) the aforesaid “Freedom of Information request”;
- (2) the Comptroller’s March 9, 2018 letter and all “other documents about the stipends” furnished by the Comptroller in response to the “Freedom of Information request”, such as the “so-called Senate certifications” and “newest payment request, dated March 6”;
- (3) all records reflecting the Comptroller’s guidelines and/or forms for certifications, *to wit*, requirements as to wording and signature of its attesting officer;

- (4) all records reflecting what actions, if any, the Comptroller took to clarify from “legal authorities” the “legality of the Senate’s practices” throughout the past 10 months in which he did not “claw back” “lulu” payments based on last year’s requests.

Finally, if the Senate has not yet responded to the Comptroller’s March 9, 2018 letter, request is made for such response(s), following receipt.

Pursuant to Public Officers Law §89.3, your response/acknowledgment is required “within five business days” of your receipt of this request. I would appreciate if you e-mailed it to me at elena@judgwatch.org. Thank you.



Enclosure: *“No Lulus for You: Comptroller Threatens to Withhold Lawmakers’ Payments”*,
New York Times, March 16, 2018 (Jesse McKinley)

cc: New York Times
Jesse McKinley, among others

No Lulus for You: Comptroller Threatens to Withhold Lawmakers' Payments

Jesse McKinley

Photo



State Sen. John J. Flanagan, the president of the New York State Senate, disputes claims by the state comptroller that some lawmakers are not entitled to stipends. Credit Nathaniel Brooks for The New York Times

ALBANY — The state comptroller's office has threatened to reject future requests for lucrative stipend payments worth tens of thousands of dollars from the Republican-led State Senate as a result of its continued use of false committee titles to draw down payments for senators who are part of its ruling coalition.

The move comes even as law-enforcement officials investigate whether the requests constitute illegal activity.

Comptroller Thomas P. DiNapoli, a Democrat, took his action shortly after his office received so-called Senate certifications falsely listing five senators — all Republicans or members of a group of renegade Democrats who collaborate with the G.O.P. — as chairmen and chairwomen of Senate committees.

The senators in question are actually vice chairs of those committees, a second-in-command position that is not entitled to a stipend under state law.

“We note that certain members are listed in Section 5-a titles that do not correspond to the public information published on the Senate website and elsewhere,” Mr. DiNapoli’s office, which is responsible for paying state employees, wrote in a March 9 letter. The letter warns that if the titles are not corrected, “We will be withholding the remaining payments to those affected members.”

[Continue reading the main story](#)

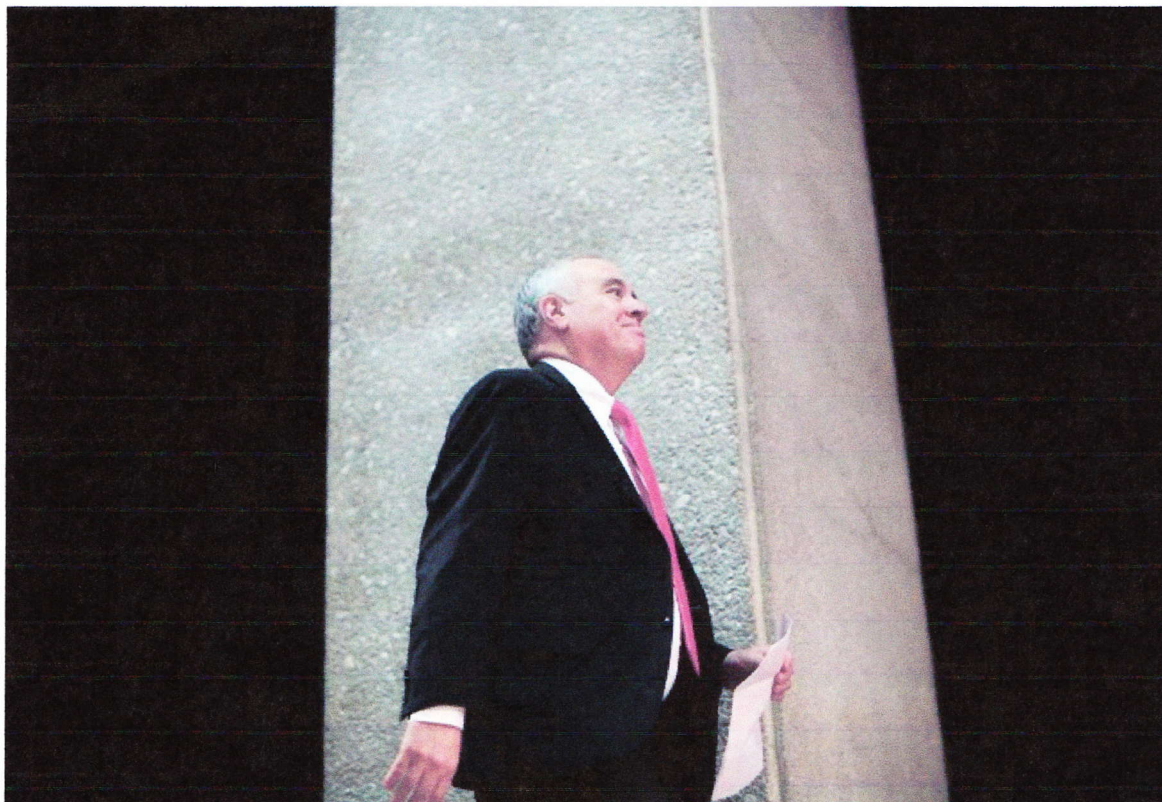
The use of false titles in requests for stipends, known as “lulus” in Albany, was [uncovered last year](#) by The New York Times; federal authorities in Brooklyn subsequently [opened an investigation](#). The status of that probe is not known.

The most recent certification, sent by Senate officials to authorize the stipends, requests payments for Senators Diane J. Savino and Jose R. Peralta, both members of the Independent Democratic Conference, the splinter faction; and the Republican Senators [Thomas F. O’Mara](#), [Patrick M. Gallivan](#) and [Patty Ritchie](#). None of those lawmakers is chairman or chairwoman of the committees that they are being identified as leading.

Two other members of the I.D.C. — Sen. Jeffrey D. Klein, who leads the group, and Sen. David Valesky, his deputy — are respectively identified in the Senate certification as “vice president pro tempore,” due an annual stipend of \$34,000, and “senior assistant majority leader of the Senate,” due \$27,500. But neither Mr. Klein nor Mr. Valseky are listed that way on [the Senate website’s list of leaders](#), nor on [either man’s personal biography](#). Nor is either man referred to by those titles in a listing of leadership appointments in the state’s Legislative Digest, a comprehensive record of Albany’s daily activity.

Candice Giove, a spokeswoman for the I.D.C., said on Friday, “We expect the secretary of the Senate will answer all of the comptroller’s questions to his satisfaction.”

Photo



The New York State comptroller, Thomas P. DiNapoli, a Democrat, warned in a letter from his office that it withhold payment because Republican officials provided false titles for some lawmakers that would qualify them for stipends. Credit Nathaniel Brooks for The New York Times

The cooperation between the I.D.C. and the Republican Party in the State Senate has been the source of intense friction between Mr. Klein's group and mainstream Democrats in the chamber, led by Andrea Stewart-Cousins of Westchester County. Mr. Klein and Ms. Stewart-Cousins have indicated a willingness to reunite if Democrats seize a numerical majority in April, when two special elections favoring Democrats are being held, but that scenario is dependent on another rogue Democrat, Senator Simcha Felder of Brooklyn, reuniting with his party's conference; he currently sits with Republicans.

Mr. DiNapoli's office indicated that it intends to pay out 25 percent of the stipend amounts requested — which are scheduled to be in paychecks next week — but will not pay the remaining 75 percent in April unless the Senate provides “documentation showing that these members serve in the office or special capacity listed.” It also argues that the office will attempt to claw back the money already scheduled to be paid if proper explanation is not given.

The letter from Mr. DiNapoli's office and other documents about the stipends were obtained through a Freedom of Information request. In a statement, a spokeswoman for the comptroller, Jennifer Freeman, said the office had issued the letter since “legal entities have yet to clarify the legality of the Senate's practices,” after they were brought to light last year.

State [Legislative Law 5-a](#) allows senators who serve as chairs or ranking members of committees to receive stipends ranging from \$9,000 to \$34,000 a year, sometimes greatly increasing a lawmaker's \$79,500 salary. But the law does not outline payments for vice chairs.

In past years, senators have received tens of thousands of dollars for jobs they did not hold. And the newest payment request, dated March 6, mirrors similar certifications made in previous years, incorrectly listing senators as committee chairmen and chairwomen. Ms. Savino, for instance, was listed as chairwoman of the [Codes Committee](#) and as such entitled to receive \$4,500, a quarter of the annual \$18,000 allotted to the actual chairman, Andrew Lanza. She is the committee's vice chair.

The same situation is true for Mr. Peralta, the No. 2 on the Senate's [Energy and Telecommunications Committee](#), who is misidentified as its chairman and slated to receive \$3,125, part of the \$12,500 earmarked for that committee's chairman, Joseph Griffo. Lawmakers can receive only one stipend and in each case, the actual chairs of those committees — such as Mr. Lanza and Mr. Griffo — receive higher stipends for other leadership positions.

State Sen. John J. Flanagan, the Republican leader, and his counsel, David L. Lewis, [have strenuously argued](#) that such misdirected lulus are legal, despite there being no explicit statutory basis for a stipend for vice chairmen. In a four-page memo released last spring, Senate officials said that the documents sent to the comptroller with the false titles were simply a way to ensure payment, not to lie about the position they held.

“The practice has been to assign to the member the statutory title to identify the amount to be paid,” Mr. Lewis wrote, “and not to assert that the member holds the specific office.”

On Friday, Scott Reif, a spokesman for the Republican majority, reiterated that position, saying the Republicans “continue to maintain that everything has been done in accordance with the law.”

“To the extent that the Comptroller has any additional questions, we will work with them to answer and resolve those questions,” Mr. Reif said. “Just like we would on any other issue.”

[Continue reading the main story](#)