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Testimony of Elena Ruth Sassower Director, Center for Judicial Accountability, Inc. (CJA)

November 30, 2018 Public Hearing **New York State Compensation Committee**

My name is Elena Sassower. I am director and co-founder of the Center for Judicial Accountability, Inc. (CJA), a nonpartisan, nonprofit citizens' organization. For the past seven years, we have chronicled that the constitutional officers of our state's three government branches have been colluding to secure for themselves undeserved, unconstitutional pay raises by an unconstitutional commission scheme. Our website, www.judgewatch.org, features a prominent homepage link entitled: "2018 Compensation Commission – Unconstitutionality in Plain Sight", from which you can access the video and documentary evidence pertaining to these seven years, in substantiation of my testimony before you.

The statute that has created this Compensation Committee, whose §4(¶2) gives its pay recommendations "the force of law", is largely identical to the 2010 statute that created the Commission on Judicial Compensation, enacted without legislative due process and by a "message of necessity". Likewise, it is largely identical to the 2015 budget statute that repealed and replaced it with the Commission on Legislative, Judicial, and Executive Compensation, also enacted without legislative due process and by a "message of necessity". CJA has litigated the unconstitutionality of these two predecessor statutes, *as written, as applied*, and by their enactment, in three lawsuits, each expressly "on behalf of the People of the State of New York and the Public Interest": a declaratory judgment action commenced in March 2012 and, thereafter, two citizen-taxpayer actions commenced in March 2014 and September 2016, respectively, that additionally demonstrated that the New York state budget is "OFF THE CONSTITUTIONAL RAILS", violating a mountain of constitutional provisions, statutes, and legislative rules in a "grand larceny of the public fisc" on a massive scale.

As the record of these three lawsuits establish, resoundingly, the only reason we did not obtain summary judgment declarations on all our causes of action, long ago, is that then Attorney General Schneiderman, unlawfully representing himself and his fellow defendants – Governor Cuomo, Comptroller DiNapoli, the prior and present Senate Majority Leader, the Senate, the prior and present Assembly Speaker, the Assembly, and the prior and present Chief Judge – corrupted the judicial process with litigation fraud, because he had NO legitimate defense, and was rewarded with fraudulent decisions by judges with HUGE financial interests in the commission-based judicial pay raises those statutes enabled and which the budget pays out, without a line item as to their cost. To date, since April 1, 2012, the payout for the commission-based judicial pay raises has been well over

\$300 million dollars, with state judges currently receiving salaries of approximately \$75,000 a year more than they are entitled.

Over the past four months, Attorney General Underwood has continued former Attorney General Schneiderman's *modus operandi* of litigation fraud before the Appellate Division, Third Department in the still-live second citizen-taxpayer action. The ten causes of action of its verified complaint include three challenging the Commission on Legislative, Judicial, and Executive Compensation's enabling statute and the Commission's misfeasance and violations of that statute in rendering its report recommending judicial pay raises, materially replicating the misfeasance and violations of the Commission on Judicial Compensation, by its judicial pay raise recommending report.

Your review of the record of CJA's second citizen-taxpayer action is ESSENTIAL as it will convince you that in all respects but one, this Committee's enabling statute is unconstitutional, *as written*, that the process leading to its enactment, *via* the budget, without legislative due process, and by a "message of necessity", is unconstitutional, and that even were the statute and enactment constitutional, which they are not remotely, there is no way that the Committee's four statutorily-designated members – the statutorily-designated Chief Judge having reportedly recused herself, based on possible constitutional challenge to the statute coming before the Court of Appeals – can rectify their violation of the statute by failing to discharge their duties for nearly 7-1/2 months of the Committee's statutorily-fixed 9-month life (§7), clearly motivated by election year political calculations.

The single respect in which this Committee's enabling statute is less unconstitutional than the enabling statutes of the two compensation commissions is that its §2(¶3) specifies that "the parties' performance and timely fulfillment of their constitutional and statutory responsibilities" are among the "appropriate factors" the Committee is required to "take into account" – placing it first among the statute's eight enumerated "appropriate factors". This is as it should be because a public officer not performing the constitutional and statutory duties of his office is not earning his existing salary – making superfluous the subsequent seven economic factors whose consideration might incline toward a pay raise. Indeed, more than seven years ago, in advocacy before William Thompson, Jr., then chairman of the Commission on Judicial Compensation, I argued and demonstrated, based on analysis of the New York State Constitution, that it would be unconstitutional to give pay raises to judges who are corrupt and not doing their jobs – where, additionally, all avenues for disciplining and removing them are corrupted. The Commission on Judicial Compensation, under Chairman Thompson, ignored and concealed this in its report recommending judicial pay raises – just as the Commission on Legislative, Judicial and Executive Compensation would do, four years later, by its report of further judicial pay raise recommendations.

As for the Committee's statutory mandate to consider not only "performance...of...statutory and Constitutional responsibilities", but "timely fulfillment" thereof, this is code for the state budget – and so-reinforced by the statute's §2(¶4b) reference to "timely legislative passage of the budget", repeated in §2(¶4c) as having "the same meaning as defined in subdivision 3 of section 5 of the legislative law", *to wit*,

“that the appropriation bill or bills submitted by the governor pursuant to section three of article seven of the state constitution have been finally acted on by both houses of the legislature in accordance with article seven of the state constitution and the state comptroller has determined that such appropriation bill or bills that have been finally acted on by the legislature are sufficient for the ongoing operation and support of state government and local assistance for the ensuing fiscal year. In addition, legislation submitted by the governor pursuant to section three of article seven of the state constitution determined necessary by the legislature for the effective implementation of such appropriation bill or bills shall have been acted on. Nothing in this section shall be construed to affect the prohibition contained in section five of article seven of the state constitution.”

In other words, pursuant to Legislative Law §5-a, timeliness with respect to “legislative passage of the budget” has no date, but rests on compliance with Article VII and, seemingly, §4, whose relevant language – providing for a rolling budget, enacted bill by bill – reads:

“Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor’s bills by the legislature shall be subject to his approval as provided in section 7 of article 4.”

This is a further reason why the Committee’s review of CJA’s second citizen-taxpayer action is ESSENTIAL, as the verified complaint, pertaining to fiscal year 2016-2017, and the supplemental verified complaint, pertaining to fiscal year 2017-2018, furnish the open-and-shut, *prima facie* evidence of the Legislature’s flagrant violation of Article VII, §4 and other Article VII provisions, including by a cause of action as to the unconstitutionality of “three-men-in-a-room” budget deal-making, conducted behind-closed-doors, and involving the amending of bills. Such first-ever cause of action – and the other six pertaining to the budget – are DISPOSITIVE as to how flagrantly the governor and legislators – with the complicity of the comptroller and attorney general – have driven the state budget “OFF THE CONSTITUTIONAL RAILS”, repudiating, as well, both statutory provisions and legislative rules. As the Committee is mandated to “take into account” the statutory “appropriate factors” of “performance” and “timeliness”, this puts an END to any recommendation of pay raises for such constitutional officers, all of whom must be indicted – not given pay raises – for the larceny of taxpayer monies and other corruption for which they are responsible.

The Constitution of the State of New York

ARTICLE III LEGISLATURE

[Journals; open sessions; adjournments.] § 10. Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days. (Formerly § 11. Renumbered and amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

ARTICLE VII STATE FINANCES

[Estimates by departments, the legislature and the judiciary of needed appropriations; hearings.] Section 1. For the preparation of the budget, the head of each department of state government, except the legislature and judiciary, shall furnish the governor such estimates and information in such form and at such times as he may require, copies of which shall forthwith be furnished to the appropriate committees of the legislature. The governor shall hold hearings thereon at which he may require the attendance of heads of departments and their subordinates. Designated representatives of such committees shall be entitled to attend the hearings thereon and to make inquiry concerning any part thereof.

Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as he may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature. (Amended by vote of the people November 8, 1977.)

[Executive budget.] § 2. Annually, on or before the first day of February in each year following the year fixed by the constitution for the election of governor and lieutenant governor, and on or before the second Tuesday following the first day of the annual meeting of the legislature, in all other years, the governor shall submit to the legislature a budget containing a complete plan of expenditures proposed to be made before the close of the ensuing fiscal year and all moneys and revenues estimated to be available

therefor, together with an explanation of the basis of such estimates and recommendations as to proposed legislation, if any, which he may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures. It shall also contain such other recommendations and information as he may deem proper and such additional information as may be required by law. (New. Derived in part from former § 2 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 2, 1965.)

[Budget bills; appearances before legislature.] § 3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.

The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or submit supplemental bills.

The governor and the heads of departments shall have the right, and it shall be the duty of the heads of departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law. (New. Derived in part from former §§ 2 and 3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Action on budget bills by legislature; effect thereof.] § 4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to his approval as provided in section 7 of article IV. (New. Derived in part from former § 3 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Restrictions on consideration of other appropriations.] § 5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill. (New. Derived in part from former § 4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Restrictions on content of appropriation bills.] § 6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation

to such appropriation. (New. Derived in part from former § 22 of Art. 3 and former § 4 of Art. 4-a. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

[Appropriation bills.] § 7. No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum. (New. Derived in part from former § 21 of Art. 3. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

ART. IV

ARTICLE IV EXECUTIVE

[Action by governor on legislative bills; reconsideration after veto]

§ 7. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if the governor approve, he or she shall sign it; but if not, he or she shall return it with his or her objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him or her, the same shall be a law in like manner as if he or she had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment. If any bill presented to the governor contain several items of appropriation of money, the governor may object to one or more of such items while approving of the other portion of the bill. In such case the governor shall append to the bill, at the time of signing it, a statement of the items to which he or she objects; and the appropriation so objected to shall not take effect. If the legislature be in session, he or she shall transmit to the house in which the bill originated a copy of such statement, and the item objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the governor. All the provisions of this section, in relation to bills not approved by the governor, shall apply in cases in which he or she shall withhold approval from any item or item contained in a bill appropriating money. (Formerly § 9. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001.)