

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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December 6, 2018

TO: Assembly Speaker Carl Heastie  
New York State Legislature

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

RE: Demand that You Substantiate Your November 30, 2018 Testimony before the New York State Compensation Committee with EVIDENCE – as You Furnished NONE

I believe you were present for my oral testimony at the Friday, November 30, 2018 hearing of the New York State Compensation Committee, which immediately followed yours. Is that correct? Did you hear what I said? I stated that you had “testified without evidence” – and that your “self-serving-claims” about “how hard-working, how responsive the Senate and the Assembly are, is fraud, is deceit”, “rebutted” by CJA’s second citizen-taxpayer action, to which you are a named defendant, as well as by the other evidence I handed up.

What is your response to my testimony? What do you deny or dispute about it – and with what evidence?

In the event the Compensation Committee has not already requested your response – consistent with its fact-finding function (Part HHH, §4, ¶1) pertaining to the first “appropriate factor[]” it is required to “take into account”, *to wit*, “the parties’ performance and timely fulfillment of their statutory and Constitutional responsibilities” (Part HHH, §2, ¶3) – absent which the other factors are irrelevant – annexed is my transcription of what I stated at the hearing (Exhibit A), made from the video, as well as my written testimony, with its accompanying excerpt of provisions from the New York State Constitution pertaining to the budget and the requirement that the Legislature’s proceedings be open (Exhibit B). The voluminous evidence I handed up to the Committee, in substantiation of my testimony, is accessible from CJA’s website, [www.judgewatch.org](http://www.judgewatch.org), via the homepage link “2018 Compensation Commission – Unconstitutionality in Plain Sight”. This evidence is but a fraction of what CJA’s website posts, most-notably, the “paper trail” of my correspondence to you, to other legislative leaders, and to rank-and-file legislators – upon which the second citizen-taxpayer action rests.

As illustrative of this correspondence, to which neither you nor your legislative colleagues responded – so-recited by the pleadings in the citizen-taxpayer action:

- (1) CJA’s January 15, 2016 letter entitled: “Immediate Oversight Required” and whose first specific was “The Commission on Legislative, Judicial and Executive Compensation and its statute-repudiating, fraudulent, and unconstitutional December 24, 2015 Report with ‘force of law’ judicial salary recommendations”;<sup>1</sup>
- (2) CJA’s follow-up January 28, 2016 letter entitled “To Which Committee(s) Have You Assigned Oversight of the Dec. 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation...?”;
- (3) CJA’s February 3, 2016 e-mail entitled “Feb. 4th ‘Public Protection’ Budget Hearing: Questions for Temporary Senate Pres. Flanagan & Assembly Speaker Heastie”;
- (4) CJA’s January 9, 2017 e-mail request for a meeting – & completed request form;<sup>2</sup>
- (5) CJA’s February 6, 2017 letter whose title was two questions: “(1) Where are your appointments to the Commission on Government Administration and to the Commission on State-Local Relations, required by Legislative Law Article 5-A?; (2) When will you be responding to my requests for a meeting for purposes of preventing a repeat of the constitutional, statutory, and legislative rule violations chronicled by the September 2, 2016 verified complaint in CJA’s citizen-taxpayer action?”.<sup>3</sup>

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<sup>1</sup> See Exhibit A to CJA’s September 2, 2016 verified complaint in 2<sup>nd</sup> citizen-taxpayer action: ¶¶283, 289, 292, 296, 314, 425 (March 23, 2016 verified second supplemental complaint in 1<sup>st</sup> citizen-taxpayer action) [R.151-157; R.161; R.201].

<sup>2</sup> See CJA’s March 29, 2017 verified supplemental complaint in 2<sup>nd</sup> citizen-taxpayer action, ¶¶142-146 [R.684-685].

<sup>3</sup> See CJA’s March 29, 2017 verified supplemental complaint in 2<sup>nd</sup> citizen-taxpayer action, at ¶¶216-220 [R.706-708].

To assist you in responding, I have posted this illustrative correspondence on CJA's webpage for this letter<sup>4</sup> – annexing hereto only the February 6, 2017 letter (Exhibit C-1) because it is directly germane to the FOIL/records request I e-mailed yesterday to the Assembly's records access officer – and thereafter furnished to the Compensation Commission by an e-mail entitled “Assembly Speaker Heastie's fraudulent, deceitful presentation in support of legislative pay raises – as established by EVIDENCE” (Exhibit D).

Is it your contention that an assembly speaker, properly discharging the duties of his office, could – as you have – ignore the February 6, 2017 letter and other serious and substantial correspondence – with your legislative colleagues, in leadership and the rank-and-file doing likewise – while blithely continuing all the misfeasance and nonfeasance particularized therein and, simultaneously, entreating for pay raises with pretenses about how deserving you are.

By the way, following my testimony at the hearing, I had occasion to speak with Assemblyman Gary Pretlow, who had accompanied you. Assemblyman Pretlow, a recipient of the February 6, 2017 letter (Exhibit C-2) was your appointed co-chair to your “Workgroup on Legislative Process, Operations, and Public Participation” that you formed in April 2015 and whose March 17, 2016 report recommended that Assembly committee meetings be live-streamed on the Assembly's website, with the videos promptly archived and made available and easily accessible. Indeed, the annotation to the first of these several recommendations was:

“If it takes significant time and cost to implement full, high-quality video of all committees, a simple webcam and/or audio access should be implemented promptly, with full video access as soon as practicable, beginning with key committees like Codes and Ways & Means.” (at p. 2).

I asked Assemblyman Pretlow why – more than 2-1/2 years after that March 17, 2016 report – there is still NO live-stream or video of Assembly committee meetings – further pointing out that the Senate has been live-streaming and videoing its committee meetings since 2009. He had no comprehensible answer. What is yours?

Inasmuch as you referenced, in your testimony, the Assembly's “37 standing committees and 13 joint legislative commissions”, I call upon you to explain why – if you actually believe they are functioning in a legitimate, constitutionally-acceptable fashion – you are not proudly live-streaming and videoing their meetings.

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<sup>4</sup> The direct link to CJA's webpage for this letter is here: <http://www.judgewatch.org/web-pages/searching-nys/2018-legislature/hhh-compensation-committee/12-6-18-ltr-to-heastie.htm> – and all referred-to evidence is accessible therefrom.

In fact, the Assembly's own website reveals that your "13 joint legislative commissions" are sham, as most have no members, other than a chair, and several haven't even a chair – and, yesterday, I e-mailed a FOIL/records request to the Assembly's records access officer, based thereon, thereafter supplying same to the Compensation Committee by an e-mail entitled "Assembly Speaker Heastie's fraudulent, deceitful presentation in support of legislative pay raises – as established by EVIDENCE" (Exhibit D). And making the reality of your "13 joint legislative commissions" all the more indefensible is the notice I furnished you, your fellow legislative leaders, pertinent committee chairs, ranking members, and rank-and-file legislators by CJA's above February 6, 2017 letter (Exhibit C-1), which, as aforesaid, you and they all ignored – a fact recounted by CJA's March 29, 2017 verified supplemental complaint in the second citizen-taxpayer action [R.706-708 (¶¶216-220)] in support of the first cause of action of CJA's September 2, 2016 verified complaint pertaining to the unconstitutionality of the Legislature's budget, as written and as applied. [R.99-102 (¶¶23-102); R.159-162 (¶¶301-316); R.254-260 (¶¶76-98); R.291-294 (¶¶169-178)]

As for your sham 37 standing committees, why don't you demonstrate their functioning, in the context of the current 2018-2019 fiscal year budget. Please start with the Assembly Ways and Means Committee – the only one whose funding is specified in the Legislature's budget – and to which all the Governor's budget bills, introduced on January 18, 2018, were "referred".

As the Governor's revenue budget bill #S.7509/A.9509 ended up as the vehicle for Part HHH, establishing the Compensation Committee, begin with that bill. That is what I was intending to do, as part of my testimony, substantiated by relevant records, which I had brought to the hearing, only to be cut off because of the Committee's demand that I conclude my testimony because of its 5-minute time-limitation for registered speakers.

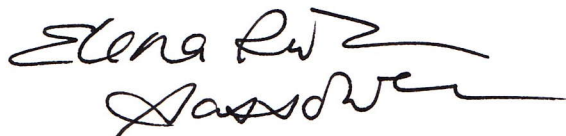
How was the revenue budget bill "amended" – apart from the Governor's 30-day amendment, of right, which changed his bill #S.7509/A.9509 to #S.7509-a/A.8509-a. Then what happened? Where was the vote, on March 13, 2018, that "amended" #A/9509-a to #A.9509-b? Was it by the members of the Ways and Means Committee – and, if so, at what meeting? And where was the vote by the Ways and Means Committee – or the Assembly – on March 30, 2018 – that voted to "amend" #A.9509-b to make it #A.9509-c? Isn't it correct that NO Assembly members ever voted to "amend" #A.9509-a to #A.9509-b – which was done, behind-closed-doors, by staff. Likewise, that NO Assembly members ever voted to amend the staff-"amended" #A.9509-b to #A.9509-c, with its inserted HHH – which was done by you, Governor Cuomo, and Temporary Senate President Flanagan, behind-closed-doors, as part of your "three-men-in-a-room" budget deal-making. What legal authority do you have for the Legislature to operate in such fashion?

There is so much more to say – but the Compensation Committee is meeting at 2:30 p.m. today and this is enough, for present purposes. Suffice to add, however, that pursuant to Article VII, §1 of the

New York State Constitution, the Legislature's "[i]temized estimates of [its] financial needs..., certified by the presiding officer of each house" were due to be furnished to Governor Cuomo by December 1<sup>st</sup> – the day after your November 30<sup>th</sup> testimony before the Compensation Committee. What did you furnish? Was it a proposed budget, transmitted by a one-sentence letter signed by you and Temporary Senate President Flanagan, replicating the same constitutional violations and deficiencies as the second citizen-taxpayer action chronicles with respect to your proposed budgets for fiscal years 2016-2017 and 2017-2018 – and about which I testified at the Legislature's budget hearing this past February 5<sup>th</sup>, in opposition to the Legislature's proposed fiscal year 2018-2019 budget, handing up a written statement, with questions for you and Mr. Flanagan – the same as I handed up to the Compensation Committee on November 30<sup>th</sup>. How about answering the questions – including as to "the process, if any, by which the Legislature's budget for fiscal year 2018-2019 was compiled"

Meantime, and so that the Compensation Committee can be alerted to its duty to require you to answer comparable questions pertaining to the Legislature's budget for fiscal year 2019-2020, attached is CJA's November 30<sup>th</sup> FOIL/records request for same (Exhibit E), e-mailed to the Assembly records access officer and Secretary of the Senate, within hours of my testimony before the Compensation Committee.

Thank you.

A handwritten signature in black ink, appearing to read "Elena Ruiz". The signature is fluid and cursive, with a long horizontal stroke at the end.

Enclosures: Exhibits A-E

cc: NYS Compensation Committee  
Assemblyman Gary Pretlow  
The Public  
The Press