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December 30, 2013

TO: Governor Andrew M. Cuomo

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

RE: SAFEGUARDING THE PUBLIC PURSE FROM LEGISLATIVE FRAUD & LARCENY: Your Duty to Exclude the Legislature's Proposed Budget from the State Budget for Fiscal Year 2014-2015 Because its Absence of Certified Itemized Estimates Violates Article VII, §1 of the NYS Constitution; Alternatively, to Recommend that the Legislature Reject it, or Alter it Based on Certification of Itemized Estimates.

This follows up the Center for Judicial Accountability's December 11, 2013 letter to you and leaders of the Legislature and its appropriate committees, identifying the unconstitutionality and fraudulence of the Judiciary's proposed budget for fiscal year 2014-2015 – and proposing a procedure for its review. The most important part of the procedure, for you, is review by your Budget Director of the Judiciary's certified "itemized estimates", so that you can discharge your duty to make "proper" "recommendations" to the Legislature, when you include them in the state budget "without revision", as you are mandated to do under Article VII, §1 of the New York State Constitution.

The Legislature's proposed budget for fiscal year 2014-2015 is also unconstitutional and fraudulent. However, here, your duty pursuant to Article VII, §1 is to exclude the Legislature's proposed budget from the state budget because it fails to comply with the conditions precedent for inclusion, set forth by Article VII, §1:

"Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house...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 the governor may deem proper." (underlining added).

Did the Legislature transmit to you "itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house"? Not according to its November 27, 2013 coverletter to you, signed by Dean G. Skelos, as the Senate's "President Pro Tem and Majority Coalition Leader", and Sheldon Silver, as the Assembly's "Speaker" – which we obtained from the

* **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.

Assembly's Public Information Office.¹ The single sentence of that coverletter identified what it was attaching:

“a copy of the Legislature's Budget for the 2014-2015 fiscal year pursuant to Article VII, Section 1 of the New York State Constitution.”

In other words, the November 27, 2013 coverletter did not claim that it was transmitting to you the Legislature's “itemized estimates” of its “financial needs” – or that same had been “certified by the presiding officer of each house”. Indeed, based on what we received from the Assembly's Public Information Office, the attachment consisted of an untitled five-page budget narrative, with a sixth page chart entitled “All Funds Requirements for the Legislature”, and a ten-page “Schedule of Appropriations”. There is no certification among these 16 pages, nor even a reference to “itemized estimates” of the Legislature's “financial needs” or to Article VII, §1. How starkly this contrasts to Chief Administrative Judge A. Gail Prudenti's two November 29, 2013 memoranda to you and legislative leaders, identifying their enclosure of “itemized estimates” of the Judiciary's “financial needs” for fiscal year 2014-2015, and furnishing two sets of approvals signed by all seven judges of the Court of Appeals and two certifications of Chief Judge Jonathan Lippman, the second being for “General State Charges”.

It is to prevent fraud and larceny of taxpayer monies that Article VII, §1 requires that the Legislature's “itemized estimates” of “financial needs” be “certified by the presiding officer of each house” – just as it requires the Judiciary's “itemized estimates” of its “financial needs” be “approved by the court of appeals and certified by the chief judge of the court of appeals”². This certification requirement takes on added significance as Article VII, §1 does not lay out any procedure by which the Legislature and Judiciary are to ascertain their “itemized estimates”, which it does for the Executive branch. That Temporary Senate President Skelos and Assembly Speaker Silver have not certified their November 27, 2013 transmittal to you, in face of the unequivocal certification language of Article VII, §1, bespeaks their knowledge that they have not transmitted the required “itemized estimates” of the Legislature's “financial needs” to which they can attest.

Where, for example, among the 16 transmitted pages are the Legislature's “General State Charges”, these being the “fringe benefits” that are pension contributions, social security, health, dental, vision and life insurance, etc. for legislators and legislative branch employees? That they are missing should be readily apparent to you – and all the more so as the Judiciary's transmitting memoranda to you for its “General State Charges”, both this year and last, explained the two-part presentation of its

¹ The Senate and Assembly have failed and refused to post their budget request documents – or to explain why. Our correspondence with them on the subject is posted on our website, www.judgewatch.org, on a webpage for this letter, accessible *via* our hyperlink “CJA Leads the Way to NYS Budget Reform...”. Also posted there: all referred-to documentary evidence and legal authorities substantiating this letter. Here's the direct link: <http://www.judgewatch.org/web-pages/searching-nys/budget-2014-2015/dec-30-2013-letter.htm>

² The definition of “certify” is “To authenticate or vouch for a thing in writing. To attest as being true or as represented.”, Black's Law Dictionary, 5th edition, abridged, 1983.

budget as:

“follow[ing] the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds.” (Judiciary’s transmitting memoranda for its “General State Charges”, underlining added).

Yet, the Legislature’s November 27, 2013 coverletter to you did not transmit any separate “General State Charges” —and when we requested same from the Assembly’s Public Information Office, its answer to this, as likewise to our request for the missing certification required by Article VII, §1, was “no additional records exist.”

So as to further confirm that the Legislature’s November 27, 2013 coverletter did not transmit to you “itemized estimates” of its “financial needs” “certified by the presiding officer of each house” or any “General State Charges”, a copy of this letter is being sent to your records access officer and to Budget Director Megna, with a request for production of same, if, in fact, they were furnished to you.

Article VII, §§2 and 3 require you to “submit to the legislature a budget containing a complete plan of expenditures proposed”, with “an explanation of the basis of such estimates”, plus “such other recommendations and information” as you “deem proper”, together with “bills containing all the proposed appropriations...included in the budget”. Therein is the answer to your duty to exclude the Legislature’s proposed budget where, as here, it violates the certification requirement of Article VII, §1 for inclusion. Submit your own budget bill of legislative appropriations, accompanied by recommendations that carry through the constitutional design. For example, much as Article VII, §1 lays out the procedure for your ascertaining the financial needs of the departments of the Executive branch – which your Budget Director implements by “call letters” followed by hearings – you might recommend that the appropriate Senate and Assembly committees send out “call letters” to the legislators, inquiring as to their “financial needs” for the proper discharge of their duties, to be followed by those committees holding joint hearings based thereon for purposes of adjusting your bill’s estimates of the Legislature’s “financial needs”, with their findings “certified by the presiding officer of each house”. The Legislature could then either furnish those certified “itemized estimates” to you so that you could “amend or supplement the budget” and your legislative budget bill, pursuant to Article VII, §3 – or could itself alter your bill, pursuant to Article VII, §4.

Of course, if notwithstanding the Legislature’s flagrant violation of Article VII, §1, you believe you are nonetheless constitutionally mandated to include its proposed budget “without revision”, your duty is to recommend its rejection for lack of the required certification. Alternatively, you could propose its approval following the above-outlined procedure: “call letters”, hearings by the appropriate Senate and Assembly committees to ascertain the Legislature’s “financial needs”, with their findings “certified by the presiding officer of each house”, followed by alterations to the bill based thereon, pursuant to Article VII, §4.

As Budget Director Megna should be assisting you with further recommendations with respect to the Legislature's proposed budget, we request that you direct him to review it and furnish you with a report. Suffice to say that the most minimal examination of its 16 pages reveals that is fashioned to mislead, conceal, and thwart intelligent review of its largest appropriations, these being:

For the Senate:

“For personal services of employees and for temporary and expert services of members’ offices and of standing committees:
Personal Service Regular \$32,404,725”

“For personal service of employees and for temporary and expert services for senate operations:
Personal Service Regular \$27,984,758”
 (“Schedule of Appropriations”, at pp. 1-2)

For the Assembly:

“For personal service of employees and for temporary and expert services of members’ offices and of standing committees and subcommittees:
Personal Service Regular \$23,112,207
Temporary Service \$2,261,960”

“For personal service of employees and for temporary and expert services for administrative and program support operations:
Personal Service Regular \$38,770,768
Temporary Service \$460,907”
 (“Schedule of Appropriations”, at p. 3)

Indeed, with these figures being identical to the figures for fiscal year 2011-2012, fiscal year 2012-2013, and fiscal year 2013-2014 – as likewise the balance of the budget – such are palpably not the product of any cognizable “process” of ascertaining the Legislature’s actual “financial needs”.

We submit that the Legislature’s budget figures are a contrivance of the leadership designed to perpetuate its power through unitemized, grossly inadequate appropriations for the staffing of legislators’ offices and the legislative committees, combined with unitemized funding for a more directly-controlled central staff.³

³ The proposed budget for 2014-2015 conceals the massive cuts in legislative staffing that have been taking place, reflected in past proposed budgets, though without any specificity as to where the cuts have been made:

Proposed budget for fiscal year 2013-2014:

Senate: “Since January of 2011...reducing staff levels by over 300 employees...”

As illustrative, although the budget narrative asserts (at p. 2):

“The Senate conducts its legislative business through the operation of 34 Standing Committees”;

“The Assembly conducts its legislative business through the operation of 38 standing committees”;

neither the budget narrative nor “Schedule of Appropriations” identify the appropriations for any committee other than \$5,830,456 for the Assembly Ways and Means Committee. There is no explanation why this is so, other than that the Senate Finance Committee appropriations are not furnished because “The Senate Finance Committee is funded as part of the Senate’s total budget.” (budget narrative, at p. 3). This is nonsense. How does being “funded as part of the Senate’s total

Assembly: “Over the past twenty-three years...reducing payroll by over 680 positions...”

Proposed budget for fiscal year 2012-2013:

Senate: “Since January of 2011,...reducing staff levels by over 300 employees...”

Assembly: “Over the past twenty-two years,...reducing the payroll...by over 650 positions...”

Proposed budget for fiscal year 2011-2012:

Senate: “In the past 16 years,...reducing its staff by 327 employees or 17.9%......closing many district offices...”

Assembly: “Over the past twenty one years,...reducing the payroll...by over 570 positions...”

Proposed budget for fiscal year 2010-2011:

Senate: “In the past 15 years,...reducing its staff by 429 employees or 23.5%......closing many district offices...”

Assembly: “Over the past twenty years,...reducing the payroll by over 500 positions...”

Proposed budget for fiscal year 2009-2010:

Senate: “In the past 14 years,...reduced its staff by 436 employees or 23.8%......closed many district offices...”

Assembly: “Over the past nineteen years,...reducing the payroll...by over 500 positions...”

Proposed budget for fiscal year 2008-2009:

Senate: “In the past 13 years,...reduced its staff by 409 employees or 22.4%......closed many district offices...”

Assembly: “Over the past eighteen years,...reducing the payroll...by over 500 positions...”

Proposed budget for fiscal year 2007-2008:

Senate: “In the past 12 years,...reduced its staff by 426 employees or 23.3%......closed many district offices...”

Assembly: “Over the past seventeen years,...reducing the payroll...by over 460 positions...”

budget” prevent itemization of that funding?⁴ In fact, up until the Legislature’s budget for fiscal year 2011-2012, “the Senate’s total budget” contained line-items for three committees: “senate select committee on interstate cooperation”; “senate special committee on the culture industry”; and “senate select committee on the disabled”. If their funding could be itemized as “part of the Senate’s total budget”, why not every other legislative committee? The Senate’s “total budget” is \$91,903,654. What is the breakdown for each of its 34 committees? The Assembly’s “total budget” is \$102,296,491. What is the breakdown for each of its 37 committees (excluding its Ways and Means Committee)?

Upon information and belief, all the 72 legislative committees, excepting the Assembly Ways and Means Committee and Senate Finance Committee, operate with funding so nominal that they lack the staff necessary to discharge their constitutional duties of lawmaking and oversight. It is to conceal this that the “Schedule of Appropriations” for the Senate and Assembly has no line-item for committee appropriations. Rather – and reflecting the reality that the committees essentially operate from the offices of their chairs, with limited additional funding for committee staff positions – the line-items for Senate and Assembly committees are each combined with members’ offices, with the result that it is impossible to ascertain the individual or collective appropriations for committees – or members’ offices. Upon information and belief, appropriations for members’ offices are also inadequate for legislators to discharge their duties. What is the amount budgeted for each member’s office?

As for the Senate line-item for “senate operations” at \$27,984,758 and the Assembly line-item for “administrative and program support operations” at \$39,231,675, these are completely undefined as to what they consist of, as, for instance, central staff. There are no numbers as to how many persons are employed in “senate operations” or “administrative and program support operations”, let alone their job titles and duties – information also missing for the committees and members’ offices.

Suffice to here note that more than half of the “Schedule of Appropriations” (pp. 5-10) is devoted to less than 10% of the Legislature’s budget⁵ – with most of the 90% balance (pp. 1-4) lacking itemization sufficient for meaningful and intelligent review. That they are also devoid of certification or even representation that they are “itemized estimates” of the Legislature’s “financial needs” only reinforces their illegitimacy – and that they are a “slush fund” from which Temporary Senate President Skelos and Assembly Speaker Silver fortify their power: rewarding the faithful and punishing the dissident. In the words of former Senator Franz Leichter, testifying on February 26, 2009 before the Temporary Senate Committee on Rules and Administration Reform about the power of the presiding officers of each house:

⁴ Indeed, when funding for the Senate Finance Committee was not “part of the Senate’s total budget” – and in most years over the past decade and a half it was not – the funding was identical to that of the Assembly Ways and Means Committee and itemized along with it.

⁵ These are the “Senate and Assembly Joint Entities”, comprising \$17,539,565 of the \$217,844,801 General Fund Budget; the \$1,600,000 Special Revenue Fund; and the \$500,000 Grants and Bequests Fund.

“They also control the Legislative Budget, which is not itemized as are the Executive and Judicial Budgets, and its opaqueness allows the shifting of monies at the leaders’ whim.”⁶

So that Temporary Senate President Skelos and Assembly Speaker Silver may have the opportunity to explain the uncertified legislative budget they submitted to you and to deny or dispute the within presentation of fact, law and argument, a copy of this letter is being furnished to them. Likewise to other legislative leadership – and to the chairs and ranking members of the appropriate Senate and Assembly committees, these being, first and foremost, the Senate Committee on Investigations and Government Operations and Assembly Committee on Oversight, Analysis and Investigation, and, secondarily, the Senate Finance Committee and Assembly Ways and Means Committee. Can they identify the process, if any, by which the Legislature determines its “itemized estimates” of its “financial needs” – and the role therein of rank-and-file legislators and the legislative committees?

As with our December 11, 2013 letter, this letter is also being furnished to scholars of New York’s budget and Constitution, bar associations with committees pertaining to these, and so-called “good-government groups” so that they may contribute their informed views to you and the Legislature.

Finally, this letter is being furnished to your so-called Commission to Investigate Public Corruption, whose own corruption, born of brazen disregard of conflict of interest rules, has resulted in the travesty that is the latest legislative budget. Certainly, had the Commission investigated the fully-documented corruption complaint we furnished it and Commission member Albany County District Attorney Soares nearly six months ago, resting, *inter alia*, on the June 13, 2013 corruption complaint we filed with U.S. Attorney Hartunian, identifying (at p. 4) the lack of certification and absence of “General State Charges” in the legislative budget for the current fiscal year, it is unlikely that Temporary Senate President Skelos and Assembly Speaker Silver would have replicated these deficiencies in the legislative budget for the upcoming fiscal year, whose every line-item appropriation is identical to every line-item appropriation of the uninvestigated current legislative budget.

Certainly, too, investigation by the Commission would have confirmed the extent to which the violations and fraud of the current legislative budget both reflect, and result from, legislative rules that vest the Temporary Senate President and Assembly Speaker with disproportionate, strangulating power over legislators and legislative committees. To no avail, we alerted the Commission again and again to the simple truth that legislative rules reform – consistent with the recommendations of the 2009 Temporary Senate Committee on Rules and Administration Reform – is the *sine qua non* to a functioning Legislature, properly discharging its lawmaking and oversight functions, without which public corruption can never be effectively curtailed.⁷

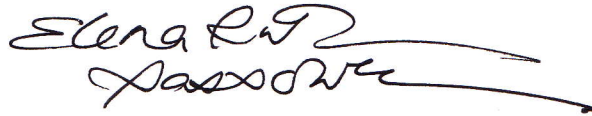
⁶ Former Senator Leichter’s searing testimony is more extensively quoted at pp. 5-6 of our August 21, 2013 letter to you, *infra*. The video of the February 26, 2009 hearing and the Senator’s written statement are posted on our “Senate Rules Reform Resource Page”, accessible from our webpage for this letter (fn. 1, *supra*).

⁷ See, in particular, pp. 6-7 of our September 17, 2013 written testimony to the Commission, submitted

Unfortunately, it appears that your goal – and the Commission’s – is not a properly functioning Legislature, but one you can manipulate by deals with the Temporary Senate President and Assembly Speaker, to which rank-and-file legislators and legislative committees are rubber stamps.

In that connection, we are still awaiting your response to our August 21, 2013 letter entitled “Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act (Program Bill #3) – the *Sine Qua Non* for ‘Government Working’ & ‘Working for the People’”. A copy is enclosed to facilitate your belated response.

Thank you.



Enclosure: CJA’s August 21, 2013 letter to the Governor

cc: Mylan Denerstein, Counsel to the Governor
Jeremy Creelan, Special Counsel for Public Integrity and Ethics Reform
Robert Megna, Director, Division of the Budget
Temporary Senate President Dean G. Skelos
Assembly Speaker Sheldon Silver
Temporary Senate President Jeffrey D. Klein
Senate Minority Leader Andrea Stewart-Cousins
Assembly Minority Leader Brian M. Kolb
Senate Committee on Investigations and Government Operations Chair & Ranking Member:
Senator Carl Marcellino & Senator Brad Hoylman
Assembly Committee on Oversight, Analysis and Investigation Chair & Ranking Member:
Assemblyman Andrew Hevesi & Assemblyman Michael Montesano
Senate Finance Committee Chair John A. DeFrancisco
Senate Finance Committee Ranking Member Liz Krueger
Assembly Ways & Means Committee Chair Herman D. Farrell, Jr.
Assembly Ways & Means Committee Ranking Member Robert C. Oaks
Senator George Latimer (37th Senate District)
Assemblyman David Buchwald (93rd Assembly District)
Commission to Investigate Public Corruption,
including Commission Member Albany District Attorney P. David Soares
U.S. Attorney for the Northern District of New York Richard Hartunian
The Public & The Press

at its September 17, 2013 “public” hearing in Manhattan. Such is posted, on our website, as part of our “People’s Campaign to Hold the Commission to Investigate Public Corruption True to its Name & Announced Purpose”, accessible from our homepage. Here’s the direct link to the webpage posting that testimony together with its referred-to substantiating evidence: <http://www.judgewatch.org/web-pages/searching-nys/commission-to-investigate-public-corruption/people-evidence/sassower-elena.htm>.