

## CENTER for JUDICIAL ACCOUNTABILITY, INC.

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February 23, 2015

TO: Senate Finance Committee  
Chairman John A. DeFrancisco  
Ranking Member Liz Krueger

Assembly Ways & Means Committee  
Chairman Herman D. Farrell, Jr.  
Ranking Member Robert C. Oaks

RE: YOUR FEBRUARY 26, 2015 "PUBLIC PROTECTION" BUDGET HEARING:  
Reconsidering Your Denial of CJA's Request to Testify, Pursuant to Legislative Law  
§32-a, in Opposition to the Proposed Judiciary and Legislative Budgets – and the  
Governor's Budget Bill #S.2001/A.3001

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

As you know, Legislative Law §32-a requires you to hold public hearings on the budget at which the public will have the opportunity to be heard. Yet by combining those budget hearings with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31, whose purpose is to afford you the testimony of the Governor, Executive branch agency heads, and the like, you effectively subvert Legislative Law §32-a. Your combined budget hearings – which you organize by “programmatically areas” – are filled with testimony from officials and recipients of budgetary appropriations. The public’s testimony is shoved to the end – or, if dispositive of the unlawfulness and unconstitutionality of the budget, shut out entirely on the pretext that the hearing is full.

Exacerbating this subversion of Legislative Law §32-a is your failure to hold the public budget hearings “regionally”, as the statute contemplates, and your assigning the Judiciary’s budget to the “programmatically area” of “public protection”, as if the Judiciary were an Executive branch agency. Apparently you are now also assigning the Legislature’s budget to that same Executive branch “programmatically area” – at least for purposes of denying my request to testify in opposition to it.

On February 2<sup>nd</sup>, I telephoned Chairman DeFrancisco’s office – and spoke with Carol Luther. She did not know whether the Legislature’s budget – unlike the Judiciary budget – would be part of the “public protection” hearing – a clear indication that you had not planned to have Temporary Senate President Skelos and former Assembly Speaker Silver testify in support of their uncertified and contrived proposed Legislative budget – or in support of the uncertified legislative re-appropriations that Governor Cuomo has once again included in an out-of-sequence section of his combined

Legislative/Judiciary Budget Bill #S.2001/A.3001.

In response to my request to testify in opposition to the Judiciary's proposed budget, Ms. Luther told me that the budget hearing on "public protection", rescheduled to February 26<sup>th</sup>, was already full and that I probably would not be able to testify. I thereupon telephoned Chairman Farrell's office to inquire whether the Legislature's own budget might be in the "programmatic area" of "general government". Clinton Freeman promptly returned my call and told me it was in "public protection". I then called Ms. Luther, requesting two slots for my testimony at the February 26<sup>th</sup> budget hearing on "public protection": one slot for my testimony in opposition to the proposed Judiciary budget and one slot for my testimony in opposition to the Legislature's proposed budget – advising her that the grounds of my last year's opposition were essentially the grounds for my opposition this year.

On February 18<sup>th</sup>, I telephoned Chairman DeFrancisco's office once more. Ms. Luther now repeated, with certainty, that I would not be able to testify at the February 26<sup>th</sup> "public protection" budget hearing because it was full. I asked to be on a waiting list – and, in response to Ms. Luther acknowledgment that she had a waiting list, I asked her for the names on it and on waiting lists for your other budget hearings.

Ms. Luther also told me that, in lieu of testifying, I could submit written testimony. This, however, does not satisfy the mandate of Legislative Law §32-a, requiring that you make "every effort to hear all those who wish to present statements at such public hearings". What "effort" have you made to "hear" statements in opposition to the proposed Legislative and Judiciary budgets – and in opposition to the Governor's Budget Bill #S.2001/A.3001 purportedly based thereon?

The proposed Legislative and Judiciary budgets – and the Governor's Budget Bill #S.2001/A.3001 – are "slush funds". They suffer from the same fatal constitutional, statutory and Legislative rule infirmities as I particularized last year with respect to the current Legislative and Judiciary budgets and the Governor's Budget Bill S.6351/A.8551 – as to which, in violation of Legislative Law §32-a, you refused to allow me to testify at the February 5, 2014 "public protection" budget hearing because, as you knew, what I had to say was dispositive. All of the mountain of correspondence I furnished you in connection therewith – and which you willfully and deliberately disregarded – can be recycled now. It is just as applicable and dispositive. The only material difference is that this year no further phase of judicial salary increase is being implemented. Rather, the three-phase judicial salary increase – whose fraudulence, unlawfulness, and unconstitutionality I directly made known to you two years ago in testifying, as the last witness, at your February 6, 2013 "public protection" budget hearing – is now fully submerged within the Judiciary budget as an annually recurring grand larceny of \$50 million taxpayer dollars, if not more.

In the interest of economy, I reiterate the objections I particularized for you by my last year's correspondence – and by CJA's citizen-taxpayer action against you based thereon, *Center for Judicial Accountability, Inc., et al. v. Governor Andrew Cuomo, et al* (Albany Co. #1788-14), whose March 28, 2014 verified complaint summarizes and annexes that correspondence. Such verified complaint is additionally significant as your last year's violations of Legislative Law §32-a are embraced by its fourth cause of action, with that specific violation expressly why the lawsuit is still

pending in Supreme Court/Albany County. As stated by the October 9, 2014 decision therein:

“Plaintiffs’ complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law §32-a regarding public hearings for New York’s Budget. Defendants argue that the cause of action should be dismissed because plaintiffs lack standing to challenge internal legislative rules. The Court has not been persuaded that Legislative Law §32-a constitutes an internal legislative rule. Additionally defendants’ submissions did not include any documentary evidence establishing a defense to said cause of action. Accordingly, defendants’ motion must be denied as to plaintiffs’ fourth cause of action.

...

**ORDERED** that defendants’ motion to dismiss is hereby denied as to plaintiffs’ fourth cause of action...” (at pp. 6-7, underlining added, capitalization and bold in the original).

The fourth cause of action is entitled “Nothing Lawful or Constitutional Can Emerge from a Legislative Process that Violates its Own Statutory & Rules Safeguards”. For your convenience, a copy is enclosed so that you can reconsider your denial of my this year’s requests to testify in opposition to the Legislative and Judiciary budgets – and the wisdom of your leading the Senate and Assembly again, like last year and the year before, to willfully disregard the panoply of safeguarding statutory, constitutional, and legislative rule provisions to which the fourth cause of action refers.

The verified complaint’s equally meritorious first three causes of action – and the unfolding litigation record in Supreme Court/Albany County – can be found on CJA’s website, [www.judgewatch.org](http://www.judgewatch.org), accessible *via* two prominent homepage links:

“What’s Taking You so Long, Preet?: CJA’s Three Litigations whose Records are Perfect ‘Paper Trails’ for Indicting New York’s Highest Public Officers for Corruption”; and

“CJA’s Citizen-Taxpayer Action to End NYS’ Corrupt Budget ‘Process’ and Unconstitutional ‘Three Men in a Room’ Governance”.

By these links you can not only access the October 9, 2014 decision preserving our verified complaint’s fourth cause of action, but our November 17, 2014 notice of appeal seeking summary judgment as to the fourth cause of action and, additionally, as to our first three causes of action, all evidentiarily-established, *as a matter of law*, by the litigation record.

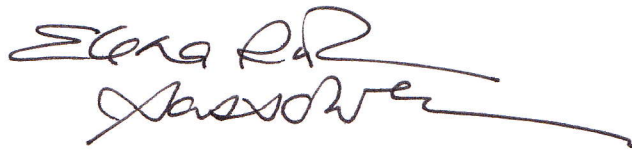
Presently your co-defendant counsel in the lawsuit, Attorney General Schneiderman, is thwarting discovery germane to the fourth cause of action by repetitively invoking the “the Speech or Debate Clause of the New York State Constitution. See N.Y. Const. art. III, §11” which states:

“For any speech or debate in either house of the legislature, the members shall not be questioned in any other place.”

As a public budget hearing pursuant to Legislative Law §32-a is a forum for dialogue to prevent unlawful and larcenous budget appropriations, your refusal to allow me to be heard at such hearing may rightfully preclude you from a "Speech or Debate Clause" defense.

Meantime, as there does not appear to be a fiscal note or introducer's memorandum for the Governor's Budget Bill #S.2001/A.3001, as required by Senate Rule VIII, §7, Senate Rule VII, §1 and Assembly Rule III, §1(f), please identify what Budget Bill #S.2001/A.3001 does not: the dollar totals of the Legislative and Judiciary portions, including their re-appropriations – and where the Legislature's "General State Charges" may be found.

Thank you.



Enclosure: As and For a Fourth Cause of Action: "Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards", verified complaint, pp. 39-43

cc: Carol Luther/Senator John DeFrancisco  
Clinton Freeman/Assemblyman Herman Farrell  
Attorney General Eric Schneiderman  
ATT: Assistant Attorney General Adrienne Kerwin  
Acting Supreme Court Justice Roger McDonough

**AS AND FOR A FOURTH CAUSE OF ACTION**

**Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards**

113. Plaintiffs repeat, reiterate, and reallege ¶¶1-112, with the same force and effect as if more fully set forth herein.

114. Even were defendant CUOMO's Budget Bill #S.6351/A.8551 and the proposed Legislative and Judiciary budgets not – as they are – fraudulent and fraught with constitutional violations and infirmities – the Legislature's wilful and deliberate violation of express statutory and rule provisions render them further unlawful and unconstitutional.

115. In mandatory terms, Legislative Law §32-a states:

“The committees shall make every effort to hear all those who wish to present statements at such public hearings.”

116. As hereinabove demonstrated, the ONLY “effort” made by defendants SENATE and ASSEMBLY was in ignoring, without response, plaintiff SASSOWER's repeated phone calls and written requests to testify at public hearings in opposition – which they did with full knowledge that her testimony was not only serious and substantial, but dispositive.

117. There is not the slightest excuse for what these defendants did in violating not only plaintiffs' right to be heard, but the public's right to hear the particularized facts and law that plaintiffs had, in abundance, with respect to the Judiciary and Legislative budgets – and with respect to the Commission to Investigate Public Corruption.

118. Nor is there the slightest excuse for their wilful and deliberate violation of their own rules – as, for instance, Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) pertaining to fiscal notes and introducer's memoranda, whose purpose is to ensure that legislators – and the public – are alerted to relevant costs. Even beyond the concealed, unitemized third phase of

the judicial salary increase, defendants SENATE and ASSEMBLY have demonstrated their utter unconcern in imposing upon taxpayers the expense of two budgets – the Judiciary and Legislative budgets – whose dollar amount they do not know or will not reveal. Such is utterly unconstitutional.

119. Indeed, apart from the absence of the mandatory fiscal notes and introducer’s memoranda, it would appear that such rules as Senate Rule VII, §4 “Title and body of bill” would, if complied with, have prevented Budget Bill #S.6351/A.8551 from funding the third phase of the judicial salary increase and superseding Judiciary Law Article 7-B, without identifying that fact.

120. Defendants SENATE and ASSEMBLY have thrown aside all the substantive and procedural Senate and Assembly rules designed to ensure a legitimate legislative process in tossing Budget Bill #S.6351/A.8551 into Senate and Assembly resolutions to commence the Legislature’s joint budget conference “process” – even something as basic as committee votes, set forth in Senate Rule VIII, §5 as follows:

“No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member's vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair.”

121. That these Senate and Assembly resolutions are wrapped in rhetoric to make it appear that there has been some deliberative process and participation only compounds the assault on the public’s rights. Thus, on March 12, 2013, on the Assembly floor, in introducing defendant SILVER’s Resolution #914, the Chair of the Assembly Ways and Means Committee stated:

“Today we will consider an assembly resolution in response to the state fiscal year 2014-15 Executive Budget. The Assembly budget is the product of deliberation among our members, with input from community groups, stakeholders, and, most importantly, the constituents we represent. Adoption of this resolution is necessary to allow us to move forward to the conference committee process....” (video, at 03:15 mins.).

122. This fiction of deliberation, participation, transparency, and process infuses the language of Resolution #914:

“...WHEREAS, Upon submission [of the Governor’s Executive budget], pursuant to Joint Rule III, the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of such budget; and

WHEREAS, After study and deliberation, each committee makes recommendations in the form of bills and resolutions as to the contents thereof and such other items of appropriation deemed necessary and desirable for the operation of the government in the ensuing fiscal year; and

WHEREAS, All such fiscal committees’ recommendations, when arrived at, are then to be placed before the members of the Legislature, individually and collectively, in their respective houses for their consideration and approval; and

WHEREAS, Each house thereupon considers and adopts legislation in bill format expressing its positions on the budget for the ensuing fiscal year; and

WHEREAS, Upon adoption thereof, a Conference Committee on the Budget, authorized by concurrent resolution of the Senate and Assembly pursuant to Joint Rule III, and such subcommittees thereof as may be deemed necessary are appointed by the Speaker of the Assembly and the Temporary President of the Senate, respectively, will engage in negotiations designed to reach an accord on the contents of the budget for the ensuing fiscal year...” (underlining added).

123. Similarly, Senate Resolution #4036, introduced by defendant SKELOS (and Klein) on March 13, 2014:

“WHEREAS, It is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public; and

WHEREAS, The Senate Finance Committee has conducted an extensive study and review of the Governor's 2014-2015 Executive Budget submission...” (underlining added).

124. The comments on the Senate floor in the wee hours of March 14, 2014 more accurately stated where matters stood:

“...the hour is late. I wish this wasn’t 12:30 at night and that we had had more time than starting at 5:30 this afternoon to review this one-house resolution. There’s an amazing amount of unknown information, there’s an amazing number of lines in the document that are concerns or modifications with no dollar figures or no even language explanation of what we might guess

is meant... But, I have to say the numbers don't add up on my own colleagues' charts.... And, in fact, I believe if we had budget bills, and, by the way, we don't have budget bills to back up any of these 55 pages of often one-sentence description, if we had budget bills before us, maybe we could have a healthier debate about what's being proposed, but, disturbingly, we don't have those on our desks and disturbingly, I don't even believe they've gone into the computers yet.... (Senate Finance Committee Ranking Member Liz Krueger, video, at 1:24:00 hours)

"I looked for bill S.6355-B, which is referenced here [in the resolution], but it doesn't seem to exist as of the point that we are being asked to debate this resolution...

...That is simply not what this process is supposed to be about. This process is supposed to be about bringing just a little bit of sunlight, a little bit of public knowledge and straight-forwardness about where each of the entities that have to negotiate a budget are at this point in the process...That is a fundamental problem with this resolution...." (Senator Daniel Squadron, video, 1:31:00 hours)

"Where to begin? Well, let's start with the fact that we started this debate at 12:19 am. I think that when we're talking about this budget resolution we got to talk about the fact that there is a broken process that has led to a broken product. The first thing, we started, as again I said at 12:19 am and we have only had a couple of hours to look at an incredibly complicated resolution at this point in reference to a whole bunch of bills that might or might not exist. Our good friend, Senator DeFrancisco, earlier referred to a bill that might be written, might not be written, etc. That tells you plenty about how the process has been broken. The fact that anybody on this side of the aisle was not even, didn't even have a real sense of what was going to be on it until a few hours ago, tells you how much the process is broken and the product itself is broken as well...

There is a no real details on mostly everything in this resolution and I'm sure when we get the bills, they will be detailed and then we can have an opportunity to really have a conversation, but again, no real opportunity for many of the folks in this body to even see the details, therefore be able to look at them, to discuss them. This is supposed to be a deliberative body. This process is supposed to be a better one, unfortunately, it is broken...

This process is broken, the product was broken. And I would implore our colleagues to, as we move forward in this that we look how we can actually have a discussion about how do we put a budget resolution together and a series of budget bills that actually address the concern of folks in this body and don't exclude so much of the conversations that we are supposed to be having..." (Senator Gustavo Rivera, video at 1:48:00 hours)

"We're still looking for those bills that don't exist, apparently... We don't have budget bills, we have vague language in a 55 page resolution that



we got way too recently. My colleagues say that this spending plan adds up, but it doesn't... ....There are so many things that are wrong here, or that are unknown here. There's a slew of items with no explanation, no amount of money...

At best this a shopping list with no badge of legitimacy. More realistically, it's a classic Albany scam designed to make everyone think they should be happy while not answering any of the important questions, like how am I going to pay for this... When a complex, but detail-free proposal comes out late in the day and you're told that you are going to come to the floor and vote on it late at night or 2 in the morning when the public and the press are asleep, you know you are being fed something fake and filled with poison pills.

Now the good news is just a one house gimmick, not the actual budget...

...I hope that when an actual set of budget bills come to the floor of this house in the next couple of weeks, we and the people of New York have an opportunity to review those budget bills, real bills with real numbers attached with adequate time to understand what's in them because that is not what has happened here tonight. (video, at 2:30:00 - 2:42:00 hours).

125. Nothing that comes out of such perverted charade is – or can be – constitutional, least of all the completely unscrutinized Legislative and Judiciary budgets.

126. Certainly, too, one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York's Constitution "...The doors of each house shall be kept open..."; Public Officers Law, Article VI "The legislature therefore declares that government is the public's business..."; Senate Rule XI, §1 "The doors of the Senate shall be kept open"; Assembly Rule II, §1 "A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public" – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, SKELOS, SILVER, SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that an citizen-taxpayer action could successfully be brought against the whole of the Executive budget.