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April 10, 2017

TO: Third Judicial District Administrative Judge Thomas A. Breslin

FROM: Elena Sassower, unrepresented individual plaintiff – citizen-taxpayer action: *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.*, Albany Co. #5122-16

RE: IMMEDIATE SUPERVISORY OVERSIGHT REQUIRED: willful, deliberate, and purposeful violation of State Finance Law §123-c(4) by Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman

I am the unrepresented individual plaintiff in the above-entitled citizen-taxpayer action challenging the constitutionality and lawfulness of the New York State budget, as to which plaintiffs have a summary judgment entitlement as to each of its ten branches. The substantiating record – and the record of plaintiffs' predecessor citizen-taxpayer action (Albany Co. #1788-14), as to which plaintiffs also had a summary judgment entitlement on each cause of action – is posted on our website, www.judgewatch.org, accessible *via* the prominent link: "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance".

On Friday, April 7th, I spoke with your law clerk, Laura Beebe, giving notice that I would be submitting a written request for your immediate supervisory oversight of Acting Supreme Court Justice/Court of Claims Judge Denise Hartman with respect to her violation of State Finance Law §123-c(4) pertaining to two orders to show cause:

> (1) a February 15th order to show cause for Judge Hartman's disqualification and vacatur of her December 21, 2016 decision – the only decision she has rendered in this citizen-taxpayer action; and
>
> (2) a March 29th order to show cause for a preliminary injunction, with TRO, to enjoin further budget action with respect to most of the budget bills for fiscal year 2017-2018.

State Finance Law §123-c(4) – part of Article 7-A entitled "Citizen-Taxpayer Actions" – reads:

> "An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts." (underlining added).

As Administrative Judge, you have supervisory authority over judges with respect to mandated time parameters for the disposition of motions – notably CPLR §2219(a). By the same token, you have supervisory authority over judges who violate the expedition commanded by State Finance Law §123-c(4) – an expedition that recognizes the imperative of safeguarding public monies from unconstitutional, unlawful disbursement and dissipation.

At bar, Judge Hartman is purposefully violating State Finance Law §123-c(4) to subvert and ultimately "throw" this citizen-taxpayer action in which she has a $60,000 a-year salary interest and personal, political, and professional relationships with the named defendants arising from her 30 years in the Attorney General's office, including under defendant Attorney General Eric Schneiderman and, prior thereto, under then Attorney General, now Governor, defendant Andrew Cuomo – the latter having appointed her to the bench in May 2015, with confirmation, thereafter, by defendant Senate. Suffice to say, Judge Hartman has made no disclosure of facts bearing upon her fairness and impartiality, including pursuant to §103.F of the Chief Administrator's Rules Governing Judicial Conduct.

By way of background, Judge Hartman was assigned to this citizen-taxpayer action on September 2, 2016, the same day as plaintiffs commenced it by an order to show cause for a preliminary injunction with TRO. The "duty judge" on September 2, 2016 was Acting Supreme Court Justice/Court of Claims Judge Roger McDonough – the same judge as had "thrown" the predecessor citizen-taxpayer action, after consistently, throughout the course of more than two years, purposefully violating State Finance Law §123-c(4).

Judge McDonough's misconduct in the predecessor citizen-taxpayer action – and on September 2, 2016 with respect to plaintiffs' order to show cause for a preliminary injunction with TRO in this citizen-taxpayer action – was before Judge Hartman upon her entry to the case. It was entirely concealed by Judge Hartman's first decision herein, on December 21, 2016 – a decision that continued in the tradition of Judge McDonough, beginning with its violation of not only State Finance Law §123-c(4), but CPLR §2219(a) – having been rendered by her nearly three weeks beyond the 60-day maximum for determining motions in an ordinary proceeding, of which this is not one.

Judge Hartman's violation of State Finance Law §123-c(4) and CPLR §2219(a) was pointed out at page 9 of plaintiffs' analysis of her December 21, 2016 decision, which I wrote. The analysis, a 23-page, single-spaced "autopsy" of Judge Hartman's conclusory, barely 7-1/4-page, double-spaced

December 21, 2016 decision, demonstrates that her decision, like Judge McDonough's decisions in the prior citizen-taxpayer action – "falsif[ied] the record in all material respects to grant defendants relief to which they [were] not entitled, *as a matter of law*, and to deny plaintiffs relief to which they [were] entitled, *as a matter of law*" (analysis, at p. 1, underlining and italics in the original).

Based on the analysis, I express-mailed an unsigned order to show cause for Judge Hartman's disqualification, for vacatur of her December 21, 2016 decision, and for reargument/renewal. That was on Wednesday, February 15th. It was delivered to the courthouse on Thursday, February 16th and receipt-stamped by Judge Hartman's chambers on Friday, February 17th. My moving affidavit, to which the analysis was annexed as Exhibit U, opened as follows:

> "2. Plaintiffs proceed by order to show cause, consistent with State Finance Law §123-c(4) which commands:
>
> > 'An action under the provisions of this article shall be heard upon such notice to such officer or employee as the court, justice or judge shall direct, and shall be promptly determined. The action shall have preference over all other causes in all courts.'
>
> 3. The overarching issue presented by plaintiffs' order to show cause is their entitlement to vacatur of the Court's December 21, 2016 decision and order... because it is legally and factually indefensible and fraudulent – the product of a judge disqualified by actual bias, born of financial interest and long-standing relationships with the named defendants, who made no disclosure, notwithstanding requested to do so, and then corruptly used her office to benefit herself and them. This is demonstrated by plaintiffs' annexed analysis of the decision (Exhibit U), which I wrote and to whose accuracy I swear.
>
> 4. Absent the Court's disqualifying itself and vacating its December 21, 2016 decision based on the analysis, plaintiffs will immediately file and perfect an appeal to the Appellate Division, Third Department, likewise based on the analysis...
>
> 5. Pursuant to State Finance Law§123-c(4), this Court's duty, with respect to this order to show cause, is to fix a short return date and then render decision promptly so that if plaintiffs are compelled to file and perfect an appeal, they may do so expeditiously.
>
> 6. To facilitate this Court's fixing the shortest return date possible, I have given AAG [Adrienne] Kerwin a 'head-start' in responding by already e-mailing the analysis, this affidavit, and the unsigned order to show cause to her. My affidavit of service, with its attached e-mail receipt, is annexed (Exhibit V).

> Suffice to note that a longer return date would not benefit defendants in the slightest. No amount of time will enable defendants to refute the analysis, as it is factually and legally accurate, mandating the granting of the disqualification/vacatur relief sought by this order to show cause, *as a matter of law*." (February 15, 2017 moving affidavit, underlining and italics in the original).

What was Judge Hartman's response? Not until Monday, February 21st, did she sign the order to show cause and then, instead of fixing "the shortest return date possible" or even "a short return date", she fixed a return date UNPRECEDENTED for an order to show cause, being nearly four times beyond the earliest date I could have fixed had I proceeded, on February 15th, pursuant to CPLR §2214(b), by ordinary motion, with personal service on the Attorney General's office, *to wit*, February 23rd.[1] Judge Hartman's designated return date, as to which she noted "No personal appearances are required", was a full month later: March 24th – with the further specification that defendants, all represented by the Attorney General, had until March 22nd for answering papers. A copy of her signed February 21, 2017 order to show cause is annexed (Exhibit A).

On Wednesday, March 29th, I appeared before Judge Hartman, for the first time, and with a further order to show cause, this one with a preliminary injunction and TRO to enjoin the defendants from further budget action with respect to budget bills for fiscal year 2017-2018 which are null and void by reason of their fraudulence and constitutional violations, as to which I furnished, in substantiation, the *prima facie* evidence, entitling plaintiffs to summary judgment. Here, again, Judge Hartman's response, over and above denying the TRO, *without reasons*, and denying an immediate or timely hearing on the preliminary injunction, *without reasons*, was to fix an UNPRECEDENTED return date for the order to show cause – a full month away, April 28th – affording the Attorney General more than three weeks, to April 21st, for answering papers. Indeed, as the transcript of the March 29th oral argument reflects, Judge Hartman, without even inquiring of AAG Helena Lynch, who was there representing the defendants, as to how much time the Attorney General would need to respond, *sua sponte* offered her a full month for answering papers. A copy of Judge Hartman's signed March 29, 2017 order to show cause is annexed (Exhibit B).

On Thursday, March 30th, shortly after 9 a.m., I telephoned Judge Hartman's chambers and spoke with her law clerk, Christopher Liberati-Conant, thereupon embodying the substance of the conversation in an e-mail to Judge Hartman, sent at 11:20 a.m. The subject line read:

> "URGENT/TIME-SENSITIVE: Reconsideration – & the granting of a TRO and/or the scheduling of an evidentiary hearing, tomorrow, on plaintiffs' entitlement to a preliminary injunction…". (capitalization in original).

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[1] Service by mail would have added five days, pursuant to CPLR §2013(b)(2), making the earliest return date February 28th.

The e-mail, a copy of which is enclosed (Exhibit C), recited what had taken place at the previous day's oral argument and concluded, as follows:

> "What you did yesterday – rendering a disposition on par with your December 21, 2016 decision – the subject of plaintiffs' sub judicie February 15th order to show cause for your disqualification for actual bias reinforces your disqualification on that ground. Further proceedings before you are, as they were yesterday and previously, simply a mockery.
>
> This is a citizen-taxpayer action, required to be 'promptly determined' and 'have preference over all other causes in all courts' (State Finance Law §123-c(4)). Please furnish, forthwith, your decision on plaintiffs' February 15th order to show cause for your disqualification – one addressing the particulars of its Exhibit U analysis of your December 21, 2016 decision – which, presumably, you read before fixing a March 24th return date.
>
> Based on the mountain of prima facie, summary judgment evidence I furnished yesterday – and which I highlighted at the argument, and by my sworn affidavit, and by the particulars of plaintiffs' verified supplemental complaint in support of the order to show cause – plaintiffs established their entitlement, AS A MATTER OF LAW, to a TRO – no hearing being required. In any event, there is still time to schedule an evidentiary hearing for tomorrow – before another judge, upon your disqualification.
>
> I have already contacted the court stenographer for transcription of yesterday's proceedings.
>
> Please respond forthwith, so that I may know how to proceed. I have already reached out to the Clerk's Office – and will be following up with your supervising judge, at the Appellate Division, with defendant DiFiore's 'Excellence Initiative' at the Office of Court Administration – and also with the highest supervisory echelons of the Attorney General's office – including defendant Attorney General Schneiderman himself – so that, based upon the evidentiary proof furnished yesterday, and the directives of Article III, §10 and Article VII, §1-7 of the New York State Constitution and the Court of Appeals' decisions in Pataki v. Assembly/Silver v Pataki, 4 NY3d 75 (2004), and in NYS Bankers Association v Wetzler, 81 NY2d 98 (1993), a TRO/preliminary injunction may promptly issue in this groundbreaking citizen-taxpayer action to return New York's state budget to 'the constitutional rails'." (Exhibit C: capitalization in original).

In addition to sending this March 30th e-mail simultaneously to AAG Lynch and to her colleague, AAG Kerwin, I sent it to two supervisory attorneys in the Attorney General's office: Litigation Bureau Chief Jeffrey Dvorin and Division of State Counsel/Deputy Attorney General Meg Levine.

Two hours later, at 1:35 p.m., I sent an email addressed to Deputy Attorney General Levine – with a copy to Judge Hartman (Exhibit D). The subject line read: "Request that the AG rise above his conflicts of interest & do his duty to secure the TRO to which plaintiffs were entitled yesterday, as a matter of law". An hour and a half after that, at 3:08 p.m., I again indicated Justice Hartman as a recipient – this time of an e-mail addressed to AAG Lynch (Exhibit E-2). Entitled "Your letter of retraction to Justice Hartman", the e-mail attached and responded to AAG Lynch's March 30th letter to Justice Hartman that she had just e-mailed me (Exhibit E-1), wherein she retracted her statement at the oral argument that the Senate and Assembly "amended" bills that were the subject of plaintiffs' order to show cause, were "internal documents". Particularized by this further e-mail were AAG Lynch's other falsehoods at the oral argument, for which retraction was necessary – and which, "entitled plaintiffs to a TRO without an evidentiary hearing".

Neither AAG Lynch nor any of the other Attorney General recipients of these three March 30th e-mails denied or disputed ANY aspect of what they set forth. In other words, the "URGENT/TIME-SENSITIVE" relief I was seeking from Judge Hartman and its basis were entirely unopposed

Nonetheless, and in complete disregard of State Finance Law §123-c(4) to "promptly" determine my February 15th order to show cause for her disqualification and my request for reconsideration of her signed March 29th order to cause, giving it "preference over all other causes", Justice Hartman made no determination as to either.

On Friday, April 7th, I telephoned Judge Hartman's chambers to ascertain when I could expect a decision on my February 15th order to show cause for Judge Hartman's disqualification, and for reconsideration of her March 29th order to show cause. Law Clerk Liberati-Conant was not in and I was told by Judge Hartman's secretary, Joanne Locke, that he would not be in until Monday, April 10th. She could not tell me when Judge Hartman's decisions would be forthcoming – and stated that I would have to put my request for same in writing. This request to you for immediate supervisory oversight of Judge Hartman – a copy of which I am sending to her – constitutes that writing.

Judge Hartman has had more than ample time to determine plaintiffs' February 15th order to show cause for her disqualification. Before signing it, on February 21st, she presumably read plaintiffs' Exhibit U analysis of her December 21, 2016 decision – and could have, indeed, should have, "*sua sponte*" disqualified herself then so that the case could have expeditiously proceeded before another judge. The only reason she did not do so at that time – and the only reason she has not yet "determined" the February 15th order to show cause – is because she could not then continue to sabotage and subvert the affirmative relief to which plaintiffs are entitled, *as a matter of law* – which is what she did on March 29th and persists in doing, to date.

Absent your supervisory intercession to secure Judge Hartman's compliance with the unequivocal directives of State Finance Law §123-c(4) and/or her immediate determinations, upon receipt of this supervisory request, plaintiffs will bring an Article 78 proceeding against her to compel same. Indeed, inasmuch as the record underlying both orders to show cause establishes that Judge Hartman has no discretion but to disqualify herself for pervasive actual bias, born of financial interest and

relationships with the named defendants, plaintiffs will seek such relief, pursuant to CPLR §§7802(1), (2), and (3), should she fail to "voluntarily" disqualify herself, vacate her December 21, 2016 decision, and allow this case to go before a judge capable of rendering fair and impartial justice so that, without further delay, plaintiffs may secure the injunctive relief to which their March 29th order to show cause entitles them, *prima facie*, because they have summary judgment.

Finally, a postscript is in order. Judge Hartman did not completely ignore plaintiffs' three March 30th e-mails (Exhibits C, D, E-2) – or, perhaps, the further e-mail I copied her in on at 3:02 p.m. on Friday, March 31st, addressed to Attorney General Schneiderman and his highest executive/managerial staff: Chief Deputy Attorney General Jason Brown, Chief Deputy Attorney General Janet Sabel, and Executive Deputy Attorney General for State Counsel Kent Stauffer, bearing the subject line "IMMEDIATE OVERSIGHT & ACTION REQUIRED…" (Exhibit F). Rather, she signed a March 31st letter addressed to myself and AAG Kerwin, barring further e-mailing to her, "without specific authorization" – requiring, instead, that communications "be submitted by regular mail or personal delivery to the Clerk's Office" (Exhibit G). Suffice to say, the only party prejudiced by such letter is myself, not the Attorney General, whose offices are a five-minute walk from the courthouse and whose mailed correspondence do not require express-mailing to reach it the next day.

Inasmuch as Judge Hartman's March 31st letter was not e-mailed, but, rather, mailed – and not to my designated home address, but to CJA's postal box, notwithstanding same had been objected to in the Exhibit U analysis (at p. 8) – I did not receive it until Thursday, April 6th. In that period, Judge Hartman was an indicated recipient of two other e-mails I had sent: on Saturday, April 1st, my e-mail to court reporter Cindy Affinati, reflecting her unprofessional failure to respond to my requests to immediately order the transcript of the March 29th oral argument and to obtain same (Exhibit H), and on Sunday, April 2nd, my e-mail addressed to Attorney General Schneiderman, alone, bearing the subject line: "NYS BUDGET & THE AG's DUTY TO IMMEDIATELY SECURE A TRO, etc…" (Exhibit I).

Suffice to say that the April 2nd e-mail (Exhibit I), as likewise all my prior e-mails to the Attorney General's office to which Judge Hartman was an indicated recipient, not only reinforced plaintiffs' entitlement to the TRO, which she had denied, *without reasons*, and to an evidentiary hearing on the preliminary injunction, which she was refusing to immediately and timely hold, *without reasons*, but the relevance and importance of ALL four threshold integrity issues highlighted by plaintiffs' Exhibit U analysis of her December 21, 2016 decision as having been entirely concealed and not adjudicated by her decision, because they were dispositive of plaintiffs' rights, *to wit*:

> "(1) Justice Hartman's duty to disqualify herself and, absent that, to make on-the-record disclosure of facts pertaining to her financial interest and multitudinous associations and relationships with the defendants;
>
> (2) plaintiffs' entitlement to the Attorney General's representation/intervention, pursuant to Executive Law §63.1 and State Finance Law Article 7-A;
>
> (3) plaintiffs' entitlement to the disqualification of defendant Attorney General Schneiderman from representing his fellow defendants;
>
> (4) plaintiffs' entitlement to sanctions, and disciplinary and criminal referrals of AAG Kerwin and those supervising her in the Attorney General's office, responsible for her legally-insufficient, fraudulent dismissal cross-motion [– almost entirely granted by Judge Hartman's December 21, 2016 decision – and for AAG Kerwin's subsequent litigation fraud and that of AAG Lynch]." (Exhibit U to plaintiffs' February 15, 2017 order to show cause, at p. 7).

To further assist you in expeditiously discharging your supervisory responsibilities, I have created a webpage for this letter, with links for all the referred-to substantiating proof. The direct link to the webpage is here: http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/9-2-16-osc-complaint/enforcement.htm.

Needless to say, should you be unable to impartially discharge your administrative responsibilities in enforcing the expedition that State Finance Law §123-c(4) commands, including because your brother, Senator Neil Breslin, is a member of defendant Senate with relevant committee memberships including: the Senate Finance Committee, Senate Rules Committee, and Senate Judiciary Committee, you must recuse yourself and refer this matter to the Office of Court Administration for appropriate assignment, consistent with defendant Chief Judge Janet DiFiore's "Excellence Initiative"[2] – described by Chief Administrative Judge Lawrence Marks,

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[2] Delay is a particular focus of the "Excellence Initiative". See, *inter alia*, Executive Summary to the Judiciary's December 1, 2016 proposed budget for fiscal year 2017-2018:

> **"The Excellence Initiative: Back to Basics**
>
> The initial focus of the Excellence Initiative is on court fundamentals the Judiciary's core mission to fairly and promptly adjudicate each of the millions of cases filed in the New York State courts every year. Working closely with our Administrative Judges and local court administrators, and consulting the bar, prosecutors and other partners in the justice community, we have under taken an extensive examination into the causes of the backlogs, bottlenecks and delays in adjudicating cases. Based on this self-examination, we are designing

at page 1 of his written "Remarks" for the Legislature's January 31, 2017 "public protection" budget hearing as "a comprehensive and statewide effort to achieve operational and decisional excellence in everything we do in the Judiciary".

Consistent with State Finance Law §123-c(4), I request your response – and that of Judge Hartman – by no later than Friday, April 14th – so that I might know whether it will be necessary for me to commence an Article 78 proceeding to secure the relief the record mandates.

Thank you.

Enclosures

cc: Acting Supreme Court Justice/Court of Claims Judge Denise A. Hartman
Chief Judge Janet DiFiore's "Excellence Initiative" –
c/o Chief Administrative Judge Lawrence Marks
Attorney General Eric Schneiderman
Chief Deputy Attorney General Jason Brown
Chief Deputy Attorney General Janet Sabel
Executive Deputy Attorney General for State Counsel Kent Stauffer
Deputy Attorney General Meg Levine
Litigation Bureau Chief Jeffrey Dvorin
Assistant Attorney General Helena Lynch
Assistant Attorney General Adrienne Kerwin

> and implementing solutions – such as restructuring how courts process cases, redeploying judges and nonjudicial employees to fully maximize our resources, and increasing trial capacity – tailored to the needs of individual courts and jurisdictions.
>
> A critical feature of these efforts is obtaining and analyzing timely and accurate data. Consequently, we have devoted substantial efforts to developing new data tools – dashboards that allow us to analyze the court system's enormous case inventory, in real time, to identify problems earlier and with greater precision. These tools also allow the development of objective metrics and standards which permit swift assessment of management successes and deficiencies.
>
> The data show that we have already made significant progress in addressing delays and backlogs. But there is more that remains to be done, and we will continue to focus on this core issue.
>
> While perhaps the most important aspect of the Excellence Initiative, the timely resolution of disputes is only one of its many concerns. In the months ahead, we will examine each aspect of court operations to assess what works, what doesn't, and what we can improve…." (Executive Summary, at pp. i-ii).

See, also, Chief Administrative Judge Marks' testimony at the Legislature's January 31, 2017 budget hearing on "public protection" (transcript, at pp. 14-16; written statement, at pp. 1-2). Also, defendant Chief Judge DiFiore's "2017 State of the Judiciary Address": http://www.nycourts.gov/Admin/stateofjudiciary/ .