

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, March 28, 2017 9:54 AM
To: 'Joanne Locke'
Cc: 'meg.levine@ag.ny.gov'; 'Jeffrey Dvorin'; 'helena.lynch@ag.ny.gov'; 'Adrienne Kerwin'
Subject: Citizen-Taxpayer Action: CJA v. Cuomo, et al. #5122-16 -- RESCHEDULING OF OSC for Preliminary Injunction with TRO
Attachments: 3-28-17-osc-final.pdf; 3-27-17-senate-debt-service-amended.pdf; 3-27-17-assembly-debt-service.pdf

Dear Justice Hartman,

This follows up my phone call, shortly after 9 a.m., with your secretary Joanne Locke, informing her that I was postponing today's 11 a.m. appointment for presentment of plaintiffs' order to show cause for a preliminary injunction with TRO -- and wished to schedule another time and date -- preferably tomorrow, but no later than Thursday.

As reflected by the below, I am awaiting response from the Attorney General's office to my request for appropriate supervisory oversight. If I do not back from Deputy Attorney General Meg Levine by 11 a.m., I will continue up the supervisory chain to the top.

Indeed, in view of the serious and substantial nature of the injunctive relief being sought -- enjoining ALL further budget actions on the legislative defendants' purportedly "amended" budget bills -- and the *prima facie* evidence supporting the striking of the "amended" budget bills on constitutional grounds -- the highest-ranking members of the Attorney General's office -- including Attorney General Schneiderman himself -- must be present at the oral argument of the TRO. The order to show cause for a preliminary injunction, with TRO, that I had planned to present today is attached so that you -- and the Attorney General recipients -- can be fully apprised of what is at issue.

The relevant opening paragraphs from my proposed supplemental complaint, accompanying the order to show cause, are as follows:

"112. Virtually all the constitutional, statutory, and rule violations detailed by plaintiffs' September 2, 2016 verified complaint pertaining to the budget for fiscal year 2016-2017 -- and by their incorporated pleadings pertaining to the budgets for fiscal years 2016-2017, 2014-2015 and 2015-2016 -- are replicated with respect to the budget for fiscal year 2017-2018. Indeed, the constitutional violations are not only replicated, but the legislative defendants have so brazenly repudiated Article VII, §§4, 5, 6 of the New York State Constitution -- and the controlling consolidated Court of Appeals decision in the budget lawsuits to which they were parties: *Silver v. Pataki* and *Pataki v. Assembly*, 4 N.Y.3d 75 (2004) -- that nothing more is required for summary judgment to plaintiffs on their reiterated fifth cause of action (¶¶54-58)⁽¹⁾ than to compare defendant Governor's budget bills for fiscal year 2017-2018 with the legislative defendants' 'amended' budget bills. And facilitating the comparison are the legislative defendants' one-house budget resolutions and their accompanying summary/report of recommended budget changes, already embodied in their 'amended' budget bills -- as well as their own press releases and public statements.

113. Suffice to here quote the unequivocal language of Article VII, §§4, 5, 6, which the legislative defendants have utterly transgressed:

‘§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 approval of the governor as provided in section 7 of article IV.

§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.

§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.’

114. Indeed, because the legislative defendants’ “amending” of defendant Governor’s budget bills not only violates Article VII, §§4, 5, 6, but was fraud and no “amending” in fact, accomplished by their violation of their own legislative rules, summary judgment for plaintiffs is also mandated on their reiterated fourth cause of action (¶¶48-53)^[2] pertaining to the legislative defendants’ plethora of statutory, legislative rule, and other constitutional violations with respect to the fiscal year 2017-2018 budget.

115. As stated by plaintiffs’ September 2, 2016 complaint (¶ 33) – quoting from their prior pleadings – and hereinbelow further demonstrated:

‘In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is

not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature's own budget, throwing asunder the constitutional command: 'itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house'."

Meantime, in addition to the four FOIL/records requests regarding the legislative defendants' "amended" budget bills that I furnished you last week as enclosures to my March 24th letter – which I also supplied to the Attorney General -- attached are my two further FOIL requests pertaining to the legislative defendants' "amended" debt service budget bill, also already supplied to the Attorney General, who is on notice, by my March 24th letter and by my further e-mail communications, to come to Court with the requested documents...

Please advise as to a date and time, preferably tomorrow, for the rescheduling of the order to show cause for preliminary injunction, with TRO.

Thank you.

Elena Sassower, unrepresented plaintiff
914-421-1200

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Monday, March 27, 2017 3:07 PM
To: 'meg.levine@ag.ny.gov' <meg.levine@ag.ny.gov>
Cc: 'Jeffrey Dvorin' <Jeffrey.Dvorin@ag.ny.gov>; 'helena.lynych@ag.ny.gov' <helena.lynych@ag.ny.gov>; 'Adrienne Kerwin' <Adrienne.Kerwin@ag.ny.gov>
Subject: YOUR SUPERVISORY OVERSIGHT IS URGENTLY REQUIRED -- Citizen-Taxpayer Action: CJA v. Cuomo, et al. #5122-16

Dear Ms. Levine,

Your supervisory oversight is urgently and immediately required. Litigation Bureau Chief Dvorin is apparently refusing to identify whether he has read Exhibit U to plaintiffs' Feb 15th order to show cause – and plaintiffs' September 30, 2016 memorandum of law. Has he? Have you?

Please call me upon your review. AAG Kerwin's fraudulent opposition to the Feb 15th order to show cause must be withdrawn – and steps taken by the Attorney General's office to intervene on behalf of plaintiffs or furnish representation to us in this mammoth, utterly ground-breaking citizen-taxpayer action in which we have SUMMARY JUDGMENT over and over again – including on the issues to be presented tomorrow pertaining to the fiscal year 2017-2018 budget bills.

The budget has been DRIVEN OFF THE CONSTITUTIONAL RAILS BY YOUR CLIENTS!

Here's the webpage of my testimony before the Legislature on January 30th and 31st on the subject: <http://www.judgewatch.org/web-pages/searching-nys/2017-legislature/budget-hearings.htm> .

Thank you.

Elena Sassower
914-421-1200

From: Jeffrey Dvorin [<mailto:Jeffrey.Dvorin@ag.ny.gov>]
Sent: Monday, March 27, 2017 2:51 PM
To: 'Center for Judicial Accountability, Inc. (CJA)' <elena@judgewatch.org>
Subject: RE: "handled appropriately in all respects by this office"? --RE: CJA v. Cuomo, et al.

I suggest that you first contact Meg Levine via email.

Jeffrey Dvorin
Bureau Chief
Litigation Bureau
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

Phone (518) 776-2601 (NEW #)
FAX (518) 915-7738 (NEW #)

From: Center for Judicial Accountability, Inc. (CJA) [<mailto:elena@judgewatch.org>]
Sent: Monday, March 27, 2017 2:43 PM
To: Jeffrey Dvorin <Jeffrey.Dvorin@ag.ny.gov>
Cc: Meg Levine <Meg.Levine@ag.ny.gov>; Helena Lynch <Helena.Lynch@ag.ny.gov>; Adrienne Kerwin <Adrienne.Kerwin@ag.ny.gov>
Subject: "handled appropriately in all respects by this office"? --RE: CJA v. Cuomo, et al.

What are you talking about? What has your review consisted of? Have you read Exhibit U to plaintiffs' Feb 15th order to show cause? Have you read plaintiffs' September 30, 2016 memorandum of law?

Please furnish me with the contact telephone numbers for your superiors, including Attorney General Schneiderman's executive offices, IMMEDIATELY.

Thank you.

Elena Sassower
914-421-1200

From: Jeffrey Dvorin [<mailto:Jeffrey.Dvorin@ag.ny.gov>]
Sent: Monday, March 27, 2017 2:38 PM
To: 'Center for Judicial Accountability, Inc. (CJA)' <elena@judgewatch.org>
Subject: CJA v. Cuomo, et al.

Dear Ms. Sassower,

This is in response to the voicemail that you left today. In my view, this matter has been handled appropriately in all respects by this office. Should you wish to provide information – or the appropriate notice – regarding any application that you plan to make tomorrow, please contact Helena Lynch, the AAG who would appear for any such application, at

helena.lynych@ag.ny.gov. You expressed an interest in speaking with my superiors. In this regard, you may contact Deputy Attorney General Meg Levine at meg.levine@ag.ny.gov. Very truly yours,

Jeffrey Dvorin
Bureau Chief
Litigation Bureau
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

Phone (518) 776-2601 (NEW #)
FAX (518) 915-7738 (NEW #)

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^[1] As identified by ¶156, the fifth cause of action is ¶¶362-383 of the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint and its sixteenth cause of action, in its entirety (¶¶458-470).

^[2] As identified by ¶149, the fourth cause of action is the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint, (Exhibit A: ¶¶336-384).