CENTER for JUDICIAL ACCOUNTABILITY, INC.

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Elena Ruth Sassower, Director

BY EXPRESS MAIL

April 11, 2019

New York Court of Appeals
Clerk's Office
20 Eagle Street
Albany, New York 12207-1095

ATT: Chief Clerk John P. Asiello

RE: Aiding the Court in Protecting Itself & Appellants' Appeal of Right from the Litigation Fraud of the New York State Attorney General
Center for Judicial Accountability, Inc., et al. v. Cuomo, ...DiFiore – Citizen-Taxpayer Action / APL-2019-00029

Dear Chief Clerk Asiello:

This follows my phone conversation, on March 28, 2019, with Court Attorney Susan Woods, identifying that the Attorney General's March 26, 2019 letter to Deputy Clerk Heather Davis, opposing appellants' appeal of right, is fraudulent and inquiring as to the proper procedure for so-advising the Court. She stated that I might do so by letter – and that it would be given such consideration as the Court deems appropriate.

For immediate purposes – and so as to afford the Attorney General the opportunity to withdraw her March 26, 2019 letter, without the necessity of a formal motion to strike it as a "fraud on the court" and for such additional relief as disqualifying the Attorney General for violation of Executive Law §63.1 and for appointment of independent counsel "in order to protect the interest of the state" consistent with Executive Law §63.1 and by reason of the Attorney General's direct financial and other interests in this appeal – I herein proceed by letter, furnishing the following as an aid to the Court.

* * *

EXC-2

(3rd Dept. 1995); 43 New York Jurisprudence §25 'Exceptions to mootness doctrine'".[12]

but, additionally, that:

> "the odyssey of this citizen-taxpayer action and its predecessor – involving successive budget years repeating the identical constitutional, statutory, and rule violations of prior years and an initial commission pay raise statute thereafter replaced, *via* constitutional violations, by a second commission pay raise statute, not only materially identical, but expanded in scope – exemplifies not merely a 'likelihood of repetition', but its certainty, continuing in the present, all 'evading review', because of the corrupting of the judicial process – including subversion of the safeguarding citizen-taxpayer action statute – by judges, in collusion with the attorney general, each suffering from immense financial and other conflicts of interest.".

In fact, this is what has happened. As anticipated by appellants' February 26, 2019 Preliminary Appeal Statement (#12, ¶2), the budget for fiscal year 2019-2020, just enacted, replicates virtually all the constitutional, statutory, and rule violations detailed by appellants' September 2, 2016 verified complaint pertaining to fiscal year 2016-2017 [R.87-392] and their March 29, 2017 verified supplemental complaint pertaining to fiscal year 2017-2018 [R.671-743]. Indeed, as a result of this year's behind-closed-door, "three-men-in-a-room" budget deal-making, a new commission having "force of law" legislative powers was, on March 31, 2019, popped into the fiscal year 2019-2020 budget as Part XXX of Revenue Budget Bill #S.1509-C/A.2009-C and enacted just hours later. The commission – this time, to establish a system of voluntary campaign financing – is, in material respects, identical to Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – whose unconstitutionality, *as written and by its enactment*, is the subject of appellants' sixth cause of action, as to which the Attorney General March 26, 2019 letter focuses so much of its deceit. A copy of Part XXX of the 2019 Revenue Budget Bill is annexed (Exhibit B), from which the Court can discern, for itself, that its adjudication of the issues of constitutional construction presented by appellants' sixth cause of the action pertaining to Chapter 60, Part E, of the Laws of 2015 – and by their fourth, fifth, and ninth causes of

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12 See, additionally, this Court's "Civil Jurisdiction & Practice Outline, at p. 22 – "Mootness", citing *Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 713-714 [1980]), and stating:

> "the Court may entertain an appeal or motion when each of the three prongs of the mootness exception is satisfied: '(1) a likelihood of repetition . . .; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, i.e. substantial and novel issues' (id. at 714-715)."

Such is at bar – and the Attorney General makes no showing or claim to the contrary.

action pertaining to the budget – will obviate foreseeable litigation challenges to void Part XXX.

As for Part HHH of the 2018 Revenue Budget Bill[13], which is more materially identical to Chapter 60, Part E, of the Laws of 2015 by its establishment of a "Committee on Legislative and Executive Compensation" – and whose litigation challenge in Supreme Court/Albany County by *Delgado v. New York State* is recounted by pages 15-19 of my March 26, 2019 letter[14], there is now a second litigation challenge to it in Albany Supreme Court – *Barclay, et al. v. New York State Committee on Legislative and Executive Compensation, et al.* (#901837-19). The lawsuit, commenced by nine assemblymen and two senators, on March 29, 2019, includes a "Cause of Action 6" entitled "(Unconstitutional delegation of law-making authority), reading, in pertinent part:

> "81. The legislation that created the Committee on Legislative and Executive Compensation violated several fundamental Constitutional provisions because it purported to grant this Committee the ability to make determinations that 'have *the force of law*, and shall *supersede*, where appropriate, inconsistent provisions of section 169 of the executive law and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to January first…'
>
> 82. Only the State Legislature, subject to the approval or veto by the Governor, can enact laws. This power cannot be delegated to a hand-picked committee, thus circumventing the right of every State Legislator to vote on the 'law' and eliminating the right of the governor to veto or approve of such 'law.'
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> 83. The salaries of State Legislators must be set by law pursuant to Article III, Section 6 of the New York State Constitution, which states that '[e]ach member of the legislature shall receive for his services a like annual salary, *to be fixed by law*.' It further states that members shall continue to receive such salary 'until *changed by law* pursuant to this section.'
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> 84. Only the Senate and Assembly have the power to enact laws, subject to approval or veto by the Governor, pursuant to Article III, Section 1 of the New York State Constitution, which states that '[t]he legislative power of this State shall be vested in the Senate and Assembly.'

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[13] Part HHH is annexed as Exhibit H to appellants' 1st order to show cause in the Appellate Division, filed July 25, 2018 – and discussed at ¶31 therein and its footnote 9.

[14] The December 14, 2018 summons and verified complaint in *Delgado v. NYS* are annexed as Exhibit J to my December 15, 2018 reply affidavit in further support of appellants' 4th order to show cause in the Appellate Division.

85. The procedure for adopting a law is carefully set forth in Article III, Section 13 of the State Constitution, which states that '*no law shall be enacted except by bill.*' Article III, Section 14 of the State Constitution states that no bill shall 'be passed or *become law*, except by the assent of a majority of the members elected to each branch of the legislature...and the ayes and nays entered on the journal.'

86. Every bill passed by the Assembly and the Senate must then be presented to the Governor pursuant to Article IV, Section 7 of the State Constitution, to be signed or vetoed. If vetoed, the Legislature has the opportunity to override the veto.

87. The Commission does not have the Constitutional authority to supersede a duly adoption (sic) law, or change the salary or compensation of a state legislature (sic) by circumventing the statutory duty and responsibility of the state legislator to consider and vote on such a law, or to completely eliminate the ability of the governor to sign or veto such a law, subject to a possible veto override." (at pp. 13-14, italics in the original).

A copy of the March 29, 2019 *Barclay* petitioners' Notice of Petition, with Verified Petition and Complaint, returnable on May 3, 2019, is annexed (Exhibit C) – so that this Court can further discern that not only is the declaratory relief sought by appellants' causes of action not moot, but adjudication, in appellants' favor, will end the *Barclay* case, in addition to the *Delgado* case, because it will require the voiding of Part HHH, *as a matter of law*.[15]

* * *

Based upon the foregoing, if the Attorney General does not promptly withdraw her fraudulent March 26, 2019 letter and take steps to secure independent counsel "to represent the interest of the state" pursuant to Executive Law §63.1 and to disqualify herself based on her direct financial and other interests in this appeal, the formal motion to secure same should come from the Court. This, by issuance of an order to show cause, requiring signed responses to the above and to my March 26, 2019 letter (including its incorporated "legal autopsy" of the Appellate Division's Memorandum and

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[15] There is also a federal litigation challenge to the constitutionality of Part HHH, pending in the United States District Court for the Northern District of New York. Entitled *Robert L. Schulz, et al. v. New York State, et al.* (#1:19-cv-56), it was filed on January 15, 2019. An extract of the verified complaint, with relevant portions, is annexed (Exhibit D). Defendants are represented by the Attorney General, whose pending February 6, 2019 motion to dismiss does not purport that the plaintiffs therein have a state remedy, or reveal existing relevant state litigations – such as the *Delgado* challenge to Part HHH, as to which the Attorney General had made a January 28, 2019 motion to dismiss pivotally based on the Appellate Division's December 27, 2018 Memorandum herein.