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Elena Ruth Sassower, Director

BY PRIORITY MAIL

August 9, 2019

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

ATT: Chief Clerk/Legal Counsel to the Court John P. Asiello, Esq.

RE: AGAIN – Aiding the Court in Protecting Itself & Appellants...from the Litigation Fraud of the New York State Attorney General, NOW by its Memorandum in Opposition to Appellants' May 31, 2019 and June 6, 2019 Motions (#2019-645/#2019-646) – & FURTHER NOTICE TO ATTORNEY GENERAL LETITIA JAMES
Center for Judicial Accountability v. Cuomo, ...DiFiore – Citizen-Taxpayer Action

Dear Chief Clerk/Counsel Asiello:

This follows my phone conversation, on July 3, 2019, with the Court's motion clerk, Rachel MacVean, Esq., concerning the June 27, 2019 memorandum in opposition that I had just received from the Attorney General, urging (at p. 20) that the Court deny "in all respects":

- (1) appellants' May 31, 2019 motion for reargument/renewal & vacatur (of the Court's May 2, 2019 Order), determination/certification of threshold issues, disclosure/disqualification & other relief; and
- (2) appellants' June 6, 2019 motion for leave to appeal pursuant to Article VI, §3(b)(6) of the New York State Constitution.

I apprised Ms. MacVean that the Attorney General's memorandum in opposition was fraudulent and that absent its withdrawal by the Attorney General, I would be moving to strike it.

On August 6, 2019, I phoned Ms. MacVean again, this time to apprise her of what had happened since. The Attorney General had refused to withdraw the memorandum in opposition – and, as a consequence, I had drafted a motion to strike it as "a fraud on the court", substantiating same with a

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30-plus-page analysis of the memorandum. I further stated that I would be sending you a letter, enclosing a separate original of the analysis and requesting that you furnish it to the associate judges as immediately as possible, so that they are not misled by the Attorney General's opposition to appellants' two pending motions which, presumably, they are currently reviewing. Appellants' motion to strike, which I completed yesterday and am mailing today, together with this letter, is returnable on August 26, 2019.

Ms. MacVean identified that Court Rule 500.7 "Post-Briefing, Post-Submission and Post-Argument Communications" governs this letter request. Doubtless Rule 500.7 also governed my April 11, 2019 letter to you entitled "Aiding the Court in Protecting Itself & Appellants' Appeal of Right from the Litigation Fraud of the New York State Attorney General", constituting an analysis of her March 26, 2019 letter opposing appellants' appeal of right. Appellants' motion to strike is to strike BOTH the Attorney General's June 27, 2019 memorandum AND her March 26, 2019 letter.

I note that an additional Court rule, Rule 500.6, is entitled "Developments Affecting Appeals, Certified Questions, Motions and Criminal Leave Applications". Such would appear to govern the separate letter I advised Ms. MacVean I would be sending to furnish the Court with information as to:

- the status of the four lawsuits discussed by my March 26, 2019 letter in support of appellants' appeal of right (at pp. 15-19), and by my reinforcing April 11, 2019 letter (at pp. 13-15), and by appellants' June 6, 2019 motion (at pp. 19-20) as arising from Chapter 59, Part HHH, of the Laws of 2018,¹ establishing a "force of law" Committee on Legislative and Executive Compensation. These four lawsuits are:
 1. *Delgado, et al. v. State of New York, et al.* (Albany County #907537-18);
 2. *Schulz, et ano. v. State of New York, et al.* (NDNY #1:19-cv-56);
 3. *Barclay, et al. v. New York State Committee on Legislative and Executive Compensation, et al.* (Albany County #901837-19);
 4. *Steck, et al, v. DiNapoli, et al.*, (SDNY #1:19-cv-05015).
- two newly-commenced lawsuits arising from Chapter 59, Part XXX, of the Laws of 2019,² establishing a "force of law" Public Campaign Financing and Election Commission – lawsuits predicted by my April 11, 2019 letter (at p. 14) as "foreseeable" and by appellants'

¹ Part HHH of 2018 Revenue Budget Bill #S.7509-C/A.9509-C.

² Part XXX of 2019 Revenue Budget Bill #S.1509-C/A.2009-C.

June 6, 2019 motion (at p. 20) as “inevitable”, noting that its report is due by December 2019. These two further lawsuits are:

1. *Jastrzemski v. Public Campaign Financing Commission* (Niagara County #E169561/2019), commenced July 23, 2019;
2. *Linda Hurley v. Public Campaign Financing Commission* (Niagara County #E169547/2019), commenced July 23, 2019.

The Court must rightfully expect the Attorney General to apprise it of these “developments”, as likewise to advise it of the status of the “force of law” (second) Commission on Legislative, Judicial and Executive Compensation which, as my March 26, 2019 letter noted (at p. 15), was to be established on June 1, 2019, pursuant to Chapter 60, Part E, of the Laws of 2015³, with its report due by December 2019, as noted by appellants’ June 6, 2019 motion (at p. 20).

By copy of this letter to Attorney General Letitia James, I hereby give her NOTICE of her duty to apprise the Court of all the foregoing by an appropriate status report. Indeed, her June 27, 2019 memorandum reinforces that duty as it fraudulently identifies (at pp. 4-8) only a single constitutional issue presented by appellants’ appeal, *to wit*, the delegation of legislative power by Chapter 60, Part E, of the Laws of 2015 to the Commission on Legislative, Judicial and Executive Compensation – without revealing, or contesting, appellants’ showing:

- (1) that the unconstitutionality of Part E’s “force of law” delegation of legislative power is established by the record before the Court on appellants’ sixth cause of action (sub-causes A and B) [R.109-111 (R.187-193)], challenging the statute, *as written* – and that this is highlighted by my March 26, 2019 letter (at pp. 9-14) and further detailed by its incorporated “legal autopsy”/analysis of the Appellate Division’s affirmance of constitutionality by its December 27, 2018 Memorandum and Order (at pp. 13-17) – the accuracy of which she has not contested;
- (2) that the Court’s determination of that single constitutional issue will terminate all the lawsuits, *as a matter of law*⁴ – as so-indicated by my April 11, 2019 letter (at p. 15);
- (3) that the lawsuits will also terminate, as a *matter of law*, upon the Court’s determination of the additional aspects of Part E’s unconstitutionality presented by appellants’ appeal, concealed by the Attorney General’s June 27, 2019 memorandum, *to wit*, the unconstitutionality of Part E by its enactment

³ Part E of 2015 Budget Bill #S.4610-A/A.6721-A.

⁴ *Schulz v. New York State* would not be wholly terminated as it has other unrelated claims.

and *as applied* – and the reason is because the budget statutes they challenge suffer from comparable infirmities, by their enactment and *as applied*, to those particularized by appellants’ sixth cause of action (sub-causes D and E), fourth, fifth, and ninth causes of action (challenging the constitutionality of enactment) and by appellants’ seventh and eighth causes of action (challenging constitutionality, *as applied*) – and so-reflected by my March 26, 2019 letter (at pp. 19-21).

For the Attorney General’s convenience, and the Court’s, CJA’s webpage for this letter-NOTICE posts links for the above six lawsuits – and for the already statute-violating Public Campaign Financing and Election Commission and the already-statute-violating (second) Commission on Legislative, Judicial and Executive Compensation. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/8-9-19-ltr-notice.htm>.

As required by Rule 500.7, attached is an affidavit of service attesting that I have furnished this letter to the Attorney General. This includes the letter’s “proposed submission”, which is appellants’ 37-page “legal autopsy”/analysis of the Attorney General’s June 27, 2019 memorandum in opposition.

Thank you.

Respectfully submitted,



Elena Ruth Sassower, unrepresented plaintiff-appellant, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York
& the Public Interest

Enclosures

cc: Attorney General Letitia James
Solicitor General Barbara Underwood
Assistant Solicitor General Victor Paladino
Assistant Solicitor General Frederick Brodie