

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, March 30, 2017 3:08 PM
To: 'Helena Lynch'
Cc: 'Hartman Chambers'; 'Joanne Locke'; 'Meg Levine'; 'Jeffrey Dvorin'; 'Adrienne Kerwin'
Subject: Your letter of retraction to Justice Hartman -- CJA v Cuomo (#5122-16)
Attachments: 3-30-17-lynch-ltr-to-hartman.pdf

Dear Assistant Attorney General Lynch,

Thank you for your letter of retraction to Justice Hartman. But there is more you need to retract – beginning with your assertion at yesterday’s oral argument that plaintiffs had shown NO likelihood of success on the merits – when, in fact, plaintiffs had shown a 100% likelihood of success because they have SUMMARY JUDGMENT.

As I stated at the oral argument, in my affidavit in support of the order to show cause (at ¶15), by the verified supplemental complaint (at ¶112), and in my prior correspondence to Justice Hartman and to the Attorney General’s Office – comparison of the Senate and Assembly “amended” bills with the Governor’s bills – one facilitated by the Senate and Assembly budget resolutions and public statements -- is all that is necessary for summary judgment to the plaintiffs, based on Article VII, §§4, 5, 6 of the New York State Constitution and the Court of Appeals’ consolidated decisions in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75 (2004) and, additionally, its decision in *NYS Bankers Association v. Wetzler*, 81 NY2d 98 (1993).

By reason thereof, plaintiffs were, and are, entitled to a TRO without an evidentiary hearing – and it was your obligation, yesterday, was to come to court and concede the truth of what I had stated – and not only with respect to the content of the “amended” budget bills, but as to their fraudulent “amending”, in a completely opaque, anonymous fashion, in violation of Article III, §10 of the New York State Constitution, without so much as a single legislator voting to amend. As I stated yesterday, if you had any documents showing that those bills were legitimately “amended”, your duty was to have produced them, yesterday – and, to have brought Assembly Speaker Heastie, Temporary Senate Flanagan – or any other legislator – to testify.

Any fair and impartial judge would have “thrown the book” at an assistant attorney general who dared to appear at the oral argument, as you did, without a shred of evidence to substantiate the constitutionality of the “amended” bills – where, additionally, so much “irreparable harm” would clearly flow from the enactment of a \$150 billion state budget based on “amended” bills that would, in short order – and in this citizen-taxpayer action – have to be declared unconstitutional, substantively and procedurally – and fraudulent.

By contrast, great benefit would flow from the remedy, via Article VII, §§4, 5, 6 of the New York State Constitution – which I summarized in responding to your outrageous statement that I was seeking to “shut down government”. Suffice to quote from the postscript of my affidavit in support of the order to show cause, to which I referred:

“18. The granting of a TRO to enjoin defendants from taking further budget actions with respect to ALL nine of the legislative defendants’ “amended” budget bills is not any kind of calamity. To the contrary. New York State has, historically and repetitively, gone for months “without a budget” – even until August. Indeed, it would appear that this occurred precisely because the Legislature and Governor, *sub silentio* and in conspiracy with each other – and others, including the courts – decided to detour from Article VII, §§1-7 – and, in particular, §§4, 5, 6.

19. As I stated in testifying at the Legislature’s budget hearings, an on-time budget is in the Legislature’s own hands. Pursuant to Article VII, §4, each of the Legislature’s amended appropriation bills, restricted to striking out or reducing items from the Governor’s appropriation bills, becomes “law immediately without further action by the governor”. In other words, the Constitution provides for a “rolling budget”, enacted bill by bill.

20. The Court’s enjoining further proceedings on the “amended” budget bills will not hinder the Legislature in enacting a budget. It need only return to the Governor’s original budget bills and by amending them, consistent with Article VII, §4, and reconciling the differences between its two houses, each bill will become “law immediately without further action by the governor”. When that is done – and only then – can the Legislature, pursuant to Article VII, §5, §6, enact its own “separate bills each for a single object or purpose” for the additions, “stated separately and distinctly from the original items of the bill” – and “refer[ring] each to a single object or purpose”, subject to the Governor’s “approval as provided in section 7 of article 4”.

21. In other words, this Court’s granting of the constitutionally-compelled TRO will force the state budget back to where it belongs – firmly “on the constitutional rails”.

More than anything else, a TRO would “jump-start” a genuine “clean up” of Albany – a goal, like transparency, that Attorney General Schneiderman purports to favor.

Your obligation – which your superiors should direct – is to retract the whole of your paltry, shameful opposition yesterday – and to take steps so that a TRO issues, as immediately as possible, from Justice Hartman – or from any fair and impartial judge, as she is plainly not – so that the Senate and Assembly can promptly get to work in constitutionally “amending” and reconciling the Governor’s budget bills, to become “law immediately without further action by the governor”.

Thank you.

Elena Sassower, *unrepresented* plaintiff

on my own behalf and on behalf of the People of the State of New York & the Public Interest

914-421-1200

From: Helena Lynch [<mailto:Helena.Lynch@ag.ny.gov>]

Sent: Thursday, March 30, 2017 1:38 PM

To: 'Center for Judicial Accountability, Inc. (CJA)' <elena@judgewatch.org>

Subject: 5122-16

Ms. Sassower,

Please see the attached correspondence which was sent to the Court today.

[Helena Lynch](#)

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