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June 18, 2020

TO: Livingston County District Attorney Gregory McCaffrey

FROM: Elena Sassower, Director

RE: CORRUPTION COMPLAINT in support of grand jury inquiry, pursuant to Article I, §6 of the New York State Constitution, of Livingston County state legislators for “wilful misconduct in office”, including fraud and larceny with respect to their OWN legislative salaries & the Legislature’s OWN budget

LIVINGSTON COUNTY STATE LEGISLATORS

Senator George Borrello – 57th Senate District
Senator Patrick Gallivan – 59th Senate District

Assemblywoman Marjorie Byrnes, ESQ. – 133rd Assembly District

Pursuant to Article I, §6 of the New York State Constitution, I hereby present, for inquiry by a Livingston County grand jury, the within summary of “wilful misconduct in office” by the above-named three Livingston County state legislators, elected and re-elected for the 2019-2020 legislative session,¹ for which indictments are mandated under penal law provisions including:

Penal Law §175.35: “Offering a false instrument for filing in the first degree”;
Penal Law §195.20: “Defrauding the government”;
Penal §190.65: “Scheme to defraud in the first degree”;
Penal Law §496.05 (“Public Trust Act): “Corrupting the government in the first degree”;
Penal Law §496.06 (“Public Trust Act): “Public corruption”;
Penal Law §155.42: “Grand larceny in the first degree”;
Penal Law §460.20: “Enterprise corruption”;
Penal Law §110.00: “Attempt to commit a crime”;
Penal Law §195: “Official misconduct”;
Penal Law §105.15: “Conspiracy in the second degree”;
Penal Law §20.00: “Criminal liability for conduct of another”.

¹ Senator Gallivan and Assemblywoman Byrnes were, respectively, re-elected and elected on November 6, 2018. Senator Borrello was elected in a November 5, 2019 special election for the seat to which Senator Catharine Young had been elected on November 6, 2018.

SUMMARY

On July 15-16, 2019, I furnished Governor Cuomo, Lieutenant Governor Hochul, Attorney General James, and ALL 213 state legislators, *via* their 15 stipend-receiving legislative leaders, with a July 15, 2019 written NOTICE and substantiating analysis that the December 10, 2018 Report of the Committee on Legislative and Executive Compensation – on which their pay raises are based – was “a fraud on the People of the State of New York – and a larceny of their tax dollars”, violating a succession of penal laws, and that their duty was to void it, to return the pay raise monies they had already received, and to initiate criminal prosecutions of the Committee’s four members and abetting attorneys. Among these members, Comptroller DiNapoli, himself a beneficiary of the Report’s “force of law” salary increase recommendations.

None of the recipients denied or disputed the accuracy of CJA’s July 15, 2019 NOTICE and analysis, including the specified penal laws violated. Instead, on December 1, 2019, the highest of the 15 legislative leaders – Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie – delivered to the Governor an uncertified FY2020-21 legislative budget which, concealing that legislative salaries had been raised by the December 10, 2018 Report from \$79,500 to \$110,000 and that it had eliminated all legislative stipends other than for the 15 legislative leaders, sought \$2,713,038 more for legislative salaries and stipends than the Report entitled them.

Eight weeks after that, on January 21, 2020, Governor Cuomo publicly presented his FY2020-21 executive budget. Introduced by Lieutenant Governor Hochul, he spoke before an audience that included Temporary Senate President Stewart-Cousins, Assembly Speaker Heastie, Attorney General James, and Comptroller DiNapoli, all of whom the Governor introduced as “great”. He lauded himself and them for performing their “duty”, specifying having “constitutionally passed the budget on time”. He concealed that the Committee on Legislative and Executive Compensation had been rigged, referring to it as an “independent commission” – and stated that he supported pay raises for the Legislature, as if legislators were not already beneficiaries of pay raises. Simultaneously, he released his appropriation bill for the legislative budget, without any accompanying recommendation that the Legislature correct the \$2,713,038 overage for legislative salaries and stipends.² Instead, in an out-of-sequence, mistitled section at the back of the bill, the Governor added 32 pages of supposed “reappropriations” for the Legislature – untallied, but seemingly totaling over \$100,000,000. Among them, “reappropriations” of legislative salaries and stipends from past years.³

² Particularized at Questions #15-#18 of CJA’s February 12, 2020 “Questions for Temporary Senate President Andrea Stewart-Cousins and Assembly Speaker Carl Heastie Concerning the Legislature’s Proposed Budget for Fiscal Year 2020-21 & the Governor’s Legislative/Judiciary Budget Bill #S.7501/A.9501”, *infra*, AND at pages 9-10 of CJA’s February 18, 2020 letter to Governor Cuomo, *infra*.

³ Particularized at Questions #31-#37 of CJA’s aforesaid February 12, 2020 “Questions for Temporary Senate President Andrea Stewart-Cousins and Assembly Speaker Carl Heastie...” AND at pages 10-11 of CJA’s aforesaid February 18, 2020 letter to Governor Cuomo.

On February 18, 2020, I testified about what was going on at a local budget hearing, presided over by Temporary Senate President Stewart-Cousins, who is my own state senator. My closing words were “These are penal law violations” – and the documents I handed up, in substantiation of my testimony, were:

- (1) provisions of the New York State Constitution pertaining to the fashioning and enactment of the state budget and the openness mandated for legislative proceedings – Article VII, §§1-7; Article IV, §7; and Article III, §10;
- (2) CJA’s July 15, 2019 NOTICE and analysis;
- (3) CJA’s February 12, 2020 written statement to the Legislature as to its failure to hold any budget hearing on its OWN budget or even to post it on its Senate and Assembly websites, and furnishing 47 questions to be answered by Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie about their uncertified December 1, 2019 FY2020-21 legislative budget and about the Governor’s January 21, 2020 appropriation bill for the Legislature;
- (4) CJA’s written statement for the Legislature’s February 12, 2020 budget hearing at which the Judiciary’s Chief Administrative Judge would be testifying, furnishing 50 questions for the Legislature to require him to answer about the Judiciary’s December 1, 2019 FY2020-21 budget and about the Governor’s January 21, 2020 appropriations bill for it – the same bill as for the Legislature.

I also handed up copies of a February 18, 2020 letter I had written to Governor Cuomo, particularizing the fraud of the “simple numbers” he had touted at his January 21, 2020 executive budget address pertaining to the budgets of his “Partners in Government”: the Legislature, the Attorney General, the Comptroller, and the Judiciary – and identifying that two further letters would be forthcoming: one focused on the fraudulent, statutorily-violative, and unconstitutional December 10, 2018 Report of the Committee on Legislative and Executive Compensation and the other focused on the unconstitutionality of the Governor stuffing policy into his executive budget unrelated to fiscal matters and to any budget appropriations.

These two subsequent letters, dated March 3, 2020 and March 18, 2020, were sent to the Governor – and, simultaneously, to the 15 stipend-receiving legislative leaders. Neither they nor any other recipient of these two letters or of the February 18, 2020 letter denied or disputed their accuracy – or the accuracy of any of my correspondence to them, to the Senate Finance Committee, to the Assembly Ways and Means Committee, to other legislative committees, and to individual legislators concerning the larceny of taxpayer monies in the FY2020-21 budget, procured by a mountain of constitutional, statutory, and legislative rule violations. Yet none took corrective steps. To the contrary, they all went full-speed ahead in enacting a completely “OFF THE CONSTITUTIONAL RAILS”, slush-fund executive budget for FY2020-21, with all the complained-about larcenies retained, and whose brazen constitutional violations include its “three-men-in-a-room”, behind-

closed-doors, deal-making finale between Governor Cuomo, Temporary Senate President Stewart-Cousins, and Assembly Speaker Heastie – and the deceit that the budget thereby produced is “on time” or “timely”.

Suffice to say that just in terms of pay raises, the cost to taxpayers, since 2012, when the first commission-based “force of law” salary increases began, which were for judges – and for district attorneys because their salaries, *though paid by the counties*, are statutorily-linked to judicial salaries – is about **HALF A BILLION DOLLARS**. Most of this amount is attributable to the August 29, 2011 Report of the Commission on Judicial Compensation and the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation. These are as fraudulent, statutorily-violative, and unconstitutional as the December 10, 2018 Report of the Committee on Legislative and Executive Compensation. All three are “false instruments”, as defined by Penal Law §175.35, and in virtually identical respects – and CJA’s March 3, 2020 letter highlights this (at p. 6), with the substantiating proof as to the August 29, 2011 and December 24, 2015 commission reports embodied in CJA’s declaratory judgment action and two citizen-taxpayer actions, each “thrown” by fraudulent decisions of New York judges financially interested in preserving their judicial pay raises and the larcenous, slush-fund Judiciary budget embedding them. The record of these three lawsuits, a perfect “paper trail” from which to indict and convict the constitutional officers of New York’s three government branches for “colluding to secure for themselves undeserved, unconstitutional pay raises by an unconstitutional commission scheme” – about which I gave DISPOSITIVE oral and written testimony before the Committee on Legislative and Executive Compensation at its November 30, 2018 hearing – is accessible from CJA’s webpage for that testimony. CJA’s July 15, 2019 analysis of the Committee’s December 10, 2018 Report furnishes the direct link at page 5, footnote 4.

* * *

The foregoing summary, hyperlinked to the evidence to which it refers, and this complaint, with links to the further evidence below cited, are posted on a webpage entitled “Invoking ‘The power of grand juries to inquire into the wilful misconduct in office of public officers, and to find indictments...’ pursuant to Article I, §6 of the New York State Constitution”. It is part of a series of webpages for the “2020 LEGISLATIVE SESSION”, accessible from CJA’s homepage, www.judgewatch.org, via its prominent center link “LEGISLATIVE SESSIONS – Comparing NY’s Legislature BEFORE & AFTER its Fraudulent Pay Raise”.⁴

⁴ The direct link to the “2020 LEGISLATIVE SESSION” webpage is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/2020-session-menu.htm> and to its “GRAND JURIES” webpage is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/grand-juries.htm>. The direct link to the “2019 LEGISLATIVE SESSION” webpage is here: <http://www.judgewatch.org/web-pages/searching-nys/2019-legislative/menu-2019-legislative-session.htm>.

For a more detailed overview of the pay raise issue, the best place to start is CJA's March 3, 2020 letter, especially as it highlights why, based on CJA's July 15, 2019 NOTICE and analysis and the Governor's January 21, 2020 executive budget address, a grand jury would have ample evidence to find "wilful misconduct" pursuant to Article I, §6 of the New York State Constitution.⁵

Similar corruption complaints, based on the identical summary, are being filed with all 62 of New York's district attorneys so that grand juries in each of New York's 62 counties can take responsibility for their OWN state legislators. Not only are they pocketing larcenous pay raises for themselves based on the December 10, 2018 "force of law" committee report, but their identical wilful nonfeasance with respect to the "force of law" August 29, 2011 and December 24, 2015 commission reports and with respect to the out-of-date statutory link between judicial salaries and district attorney salaries has resulted, for 56 counties, in HUGE, completely unwarranted salary increases for district attorneys, *payable from county budgets*, whose consequence is that district attorneys have become the highest-paid county officers in most of the counties, by grossly disproportionate sums.⁶

The only materially different complaint is to Albany County District Attorney P. David Soares – and this is because his geographic and, therefore, criminal jurisdiction encompasses the state capital and thus extends to ALL 213 state legislators, as well as to Governor Cuomo, Lieutenant Governor Hochul, Attorney General James, Comptroller DiNapoli – and to the judges of the Albany-based New York Court of Appeals, Albany-based Appellate Division, Third Department, and Albany Supreme Court, who, in tandem with the Attorney General, corrupted the judicial process in CJA's two citizen-taxpayer actions challenging the constitutionality and lawfulness of the budget, of the August 29, 2011 and December 24, 2015 commission reports, and of the "force of law" commission scheme.

⁵ The direct link to the webpage for the March 3, 2020 letter, from which all its referred-to evidence is accessible, is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-3-20-ltr-to-gov.htm>.

⁶ I testified, extensively, about the situation at the Legislature's January 30, 2017 budget hearing on "local government officials/general government" — and the situation has only grown worse because of the Legislature's complete inaction. The direct link to the VIDEO of my MUST-SEE testimony is here: <http://www.judgewatch.org/web-pages/searching-nys/2017-legislature/1-30-17-budget-hearing.htm>. By the way, the [wikipedia entry for Livingston County](#) gives the following income figures:

"The county's median household income was \$42,066, and the median family income was \$50,513. Males had a median income of \$36,599 versus \$25,228 for females. The county's per capita income was \$18,062. About 5.80% of families and 10.40% of the population were below the poverty line, including 9.70% of those under age 18 and 6.50% of those age 65 or over."

The reason I am not filing a complaint with District Attorney Soares exclusively is because, for the past seven years, to advance his OWN interests, including his OWN district attorney pay raises resulting from the August 29, 2011 and December 24, 2015 commission reports, he has been “sitting on” FOUR corruption complaints I filed with him, dated July 19, 2013, January 7, 2014, June 21, 2016, and March 6, 2018,⁷ each furnishing him with a mountain of *prima facie*, open-and-shut evidence upon which to indict and convict New York’s highest constitutional officers in all three government branches, along with scores of other constitutional and public officers and their staff, for public corruption involving the “force of law” commission pay raise scheme, the budget – and the obliteration of any cognizable judicial process in CJA’s two citizen-taxpayer actions and, prior thereto, in CJA’s declaratory judgment action and in its motion to intervene in the Legislature’s declaratory judgment action against the Commission to Investigate Public Corruption, depriving the People of the State of New York of their entitlement to summary judgment, on all causes of action, *as a matter of law*, proven by the record of each lawsuit.

Kindly confirm that you will be forwarding this corruption complaint against Livingston County’s three state legislators to a Livingston County grand jury for its inquiry pursuant to Article I, §6 of the New York State Constitution, with my request to testify before it and to be questioned, under oath. Of course, preliminarily, I am available to be interviewed by you and/or your deputy and assistant district attorneys, under oath, as to my specific interactions and communications with the complained-against Livingston County state legislators – and to supply originals/copies of relevant documents bearing on their crimes. Suffice to here note:

- Senator George Borrello is ranking member of the Senate Committee on Budget and Revenues;
- Senator Patrick Gallivan is a member of the Senate Finance Committee, Senate Codes Committee, and Senate Committee on Crime Victims, Crime and Correction;
- Assemblywoman Marjorie Byrnes, ESQ. is a member of the Assembly Judiciary Committee.

⁷ As District Attorney Soares is running for re-election this year, I have aggregated the four corruption complaints he has been “sitting on” on a webpage entitled “Elections 2020: Holding Albany County District Attorney P. David Soares Accountable”. It is part of a series of webpages, accessible from CJA’s homepage link: “ELECTIONS 2020 – Taking Out Corrupt & Collusive Legislative Incumbents & Conspiring D.A.s – All Beneficiaries of Statutory-Violative, Fraudulent, Unconstitutional Pay Raises & Other Larcenies of Taxpayer Monies”. The direct link is here: <http://www.judgewatch.org/web-pages/elections/2020/district-attorney-soares.htm>.

A postscript is in order. When the four complaints were filed, the chief of District Attorney Soares’ so-called “Public Integrity Bureau” was Assistant District Attorney Eric Galarneau. In November 2019, he was appointed to a Cohoes City Court judgeship, effective January 1, 2020. He thereby became a direct beneficiary of the fraudulent judicial pay raises resulting from the August 29, 2011 and December 24, 2015 commission reports that were the subject of the complaints he “sat on” – an approximately \$70,000 a year salary boost.

As all three Livingston County state legislators are running for re-election this year, time is of the essence. Livingston County voters are entitled to know how flagrantly each betrayed them and colluded in the theft of taxpayer monies, including for their OWN salaries and by the Legislature's OWN budget. The evidence with respect to this complaint is *prima facie* and open-and-shut – requiring that both be indicted. Indeed, they will each be convicted, not the least reason being because when they swore to uphold the New York State Constitution, as Senator Gallivan and Assemblywoman Byrnes did on January 9, 2019 in taking their oaths of office for the 2019-2020 legislative session, and as Senator Borrello did on or about January 8 2020 in taking his oath of office for the 2020 legislative session, they are presumed to have read its provisions. Illustrative is Article VII, §4 of the New York State Constitution – quoted at page 2 of CJA's March 18, 2020 letter – from which any competent legislator would know that New York has a rolling budget, with appropriation bills – other than for the Legislature and Judiciary – becoming “law immediately” upon the Senate and Assembly reconciling their separate amendments to the bills, limited to strike-outs and reductions of items. Nothing remotely resembling this took place in the 2019 legislative session or in the 2020 legislative session – repeating what is chronicled by the record of CJA's two citizen-taxpayer actions with respect to the 2013 legislative session, the 2014 legislative session, the 2015 legislative session, the 2016 legislative session, the 2017 legislative session, and the 2018 legislative session.

Like the state legislators here complained against, you took the same oath of office prescribed by Article XIII, §1 of the New York State Constitution, to “support the constitution of the United States, and the constitution of the State of New York, and ...[to] faithfully discharge the duties of the office of...”. Indeed, Article XIII, §13(b) puts you in charge of its adherence, on pain of your own removal, stating:

“Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the governor, after due notice and an opportunity of being heard in his defense...”

Needless to say – and this is threshold – if you are unable to impartially discharge your duties to enforce the penal law and Article XIII, §1 and Article I, §6 of the New York State Constitution with respect to this complaint because of relationships with the complained-against legislators or other interests, you must recuse yourself and take steps to secure appointment of a special prosecutor.⁸ In

⁸ See, National Prosecution Standards of the National District Attorneys Association, Section 1-3.3“Specific Conflicts”, subdivision (d):

“The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.”

that regard, four years ago, beginning in April 2016 and then continuing in July and August, I alerted you the August 29, 2011 and December 24, 2015 commission reports were “false instruments”, financially benefitting you and 55 other full-time district attorneys, *at the expense of 56 counties*, and calling upon you to do your duty by verifying the facts and taking corrective steps. In the absence of response from you – and from your fellow district attorneys – I filed an October 14, 2016 conflict-of-interest/misconduct complaint against all of you with New York’s attorney disciplinary committees, reciting, at the outset, the testimony that district attorneys had given before the Legislature, on June 8, 2016, as to the supposed adequacy of the attorney disciplinary committees in policing unethical district attorney conduct. Simultaneously, I e-mailed it to you and your fellow district attorneys.⁹

I await your expeditious response. Meantime, this complaint and the complaints to your fellow 61 district attorneys will be disseminated to the complained-against state legislators, the candidates running to replace them, and the press. The soundbite, in three sentences, is, as follows:

- (1) the legislators are NOT doing their jobs of oversight and law-making, resulting in a Legislature that is sham and NOT operating at a constitutional level;
- (2) the legislators are stealing our money by slush-fund budgets that are “OFF THE CONSTITUTIONAL RAILS”, rife with constitutional, statutory, and legislative rule violations;

Section 1-3.5 “Special Prosecutors”:

“Where an actual or potential conflict of interest exists that would prevent the prosecutor’s office from investigating or prosecuting a criminal matter, the prosecutor’s office should appoint, or seek the appointment of a ‘special prosecutor,’ or refer the matter to the appropriate governmental authority as required by law....”

Section 1-3.4 “Conflict Handling”:

“Each prosecutor’s office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

- ...
- b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor’s office.”

⁹ The October 14, 2016 conflict-of-interest/misconduct complaint and my prior correspondence to you are aggregated on a webpage entitled “How Many D.A.s Does It Take to Confront Evidence & Abide by Ethical Rules?”. It is accessible from the link “Showcase of *ALREADY-DEMONSTRATED* District Attorney Conflicts of Interest”, posted on the webpage for this grand jury/corruption complaint. The direct link to the “How Many D.A.s...” webpage is here: <http://www.judgwatch.org/web-pages/searching-nys/budget/budget-2016-17/how-many-das-menu.htm>.

- (3) the legislators have rewarded themselves with PAY RAISES FOR THEIR CRIMES, procured by a December 10, 2018 report they know to be a “false instrument” (Penal Law §175.35).

Grand juries – and voters – will have no difficulty in understanding this – and I have created a “Background Primer” to further assist. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/district-attorneys/primer-for-grand-juries.htm>.

Finally, as required by the complaint form of District Attorney Soares’ Public Integrity Unit:

“I understand that any false statements made in this complaint are punishable as a Class A Misdemeanor under Section 175.30 and/or Section 210.45 of the Penal Law.”

Thank you.