

## Center for Judicial Accountability

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**From:** Center for Judicial Accountability <elena@judgewatch.org>  
**Sent:** Tuesday, May 03, 2016 6:50 PM  
**To:** 'SteckP@assembly.state.ny.us'; 'brownmm@assembly.state.ny.us'  
**Cc:** 'NojayW@assembly.state.ny.us'; fritz.schwarz@nyu.edu; fschwarz@cravath.com; 'eric.lane@hofstra.edu'; 'seymour.lachman@wagner.edu'; carey.institute@wagner.edu; kbaxter@nysba.org; 'rkennedy@nysba.org'; kmchargue@nysba.org; rrifkin@nysba.org; kkerwin@nysba.org; bmahan@nysba.org; mcilenti@nycbar.org; ekocienda@nycbar.org; 'zteacherout@gmail.com'; 'zteacherout@law.fordham.edu'; 'Frank Mauro'; 'deutsch@fiscalpolicy.org'; 'benjamig@newpaltz.edu'; 'dmuzz@aol.com'; 'zimmer@albany.edu'; 'rb34@columbia.edu'; richardbrodsky@gmail.com; 'galie@canisius.edu'; (jstone@syr.edu); 'Tom Gais'; 'cbopst@goldbergsegalla.com'; dfeldman@jjay.cuny.edu; cbrecher@cbcny.org; mdoulis@cbcny.org; dliebschutz@albany.edu; mpawluk@harrisbeach.com; donboyd5@gmail.com; capej@rockinst.org; ldadayan@albany.edu; dmatkin@albany.edu; 'richardnathan55@gmail.com'; 'pstrach@albany.edu'; 'lawrence.norden@nyu.edu'; 'denora.getachew@nyu.edu'; Blair Horner (bhorner@nypirg.org); 'bbheck1@yahoo.com'; 'lwwny@lwwny.org'; jennifer@lwwny.org; 'slerner@commoncause.org'; pkatze@commoncause.org; (ddadey@citizensunion.org); twerber@citizensunion.org; 'jkaehny@reinventalbany.org'; dominic@reinventalbany.org; 'EJM@EmpireCenter.org'; 'thoefer@empirecenter.org'; 'Bob Schulz'; Bob Schulz (wethepeopleofnewyork@gmail.com); 'oaksR@assembly.state.ny.us'  
**Subject:** Thank you, Assemblyman Steck! Follow-up to your March 23, 2016 testimony before the Commission on Legislative, Judicial & Executive Compensation  
**Attachments:** 4-29-16-email-to-schwarz.pdf

Dear Assemblyman Steck,

Thank you for your two return calls today, for the constructive, substantive conversation we had in each of those calls, and, most importantly, for your promise to review the March 23, 2016 verified second supplemental complaint in our citizen-taxpayer action against the “three-men-in-the-room”, and the Legislature, Attorney General, and Comptroller. Here’s the direct link to the webpage on which it is posted: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>.

The aim of the lawsuit is to restore constitutional, lawful governance, such as we do not now have – a key component of which is a legislative budget that is actually based on the “certified” “financial needs” of the legislative committees and member offices – with issues such as the compensation of legislative, judicial, and executive officers resolved through committee hearings, bills based thereon, discussed, debated, amended, voted on in committee, and then on the Senate and Assembly floor, with the different bills then reconciled, and sent to the Governor and, if vetoed, the subject of legislative override -- in other words, resolved through “legislative due process”. As stated at ¶ 392 of the second supplemental complaint:

“[The] outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.” (capitalization in the original).

Below is my March 25<sup>th</sup> e-mail to Assembly Ways and Means Committee Ranking Member Bob Oaks – to which you were an indicated recipient because, two days earlier, you had testified before the Commission on Legislative, Judicial and Executive Compensation, at its March 23<sup>rd</sup> hearing at the Capitol. This was also one of the reasons why Assemblyman Nojay was an indicated recipient – the other reason being his co-sponsorship of A7997 – a bill to amend the budget statute establishing the Commission on Legislative, Judicial and Executive Compensation.

I am sending a copy of this e-mail to Assemblyman Nojay, who, like yourself, is a lawyer. Just as I questioned your statement at the March 23<sup>rd</sup> hearing that a constitutional amendment would be necessary if the Legislature were to be “full time” (Tr. 29-30) – as I can find NO constitutional provision that makes the Legislature “part time” – so I take this opportunity to ask Assemblyman Nojay to identify the constitutional provision to which he was referring when he stated that March 31<sup>st</sup> is “the constitutionally required deadline for the budget” (Tr. 10), as I can find NO such constitutional provision.

As discussed, and by contrast to Assemblyman Nojay’s March 23<sup>rd</sup> testimony, which – at least rhetorically – was in opposition to legislative salary increases, your testimony, in favor, was silent about how the Legislature functions. The question as to how the Legislature functions – i.e. lack of committee hearings, “three-men-in-a-room”, etc. -- was an important issue raised by the witness that followed you at the hearing: Fritz Schwarz, Chief Counsel at the Brennan Center for Justice, who chaired the 2015 New York City Quadrennial Commission, advising as to compensation of New York City officials. Attached is my April 29, 2016 e-mail to Mr. Schwarz, alerting him to the fact that the March 23, 2016 second supplemental complaint furnishes the answer – including as to how the Legislature discharges its oversight responsibilities, the importance of which he had identified in his testimony (Tr. 52-53).

I will be away for the next several weeks – celebrating, with my mother, my 60<sup>th</sup> birthday on Mother’s Day. I will not be reachable by phone, but will be reachable by e-mail: [elena@judgewidth.org](mailto:elena@judgewidth.org). Upon my return, let us continue our substantive conversation. Your leadership will pave the way for the legislative salary raises that, at present, would be unconstitutional for all the reasons detailed by the sponsors’ memo to A7997 and further elaborated upon by the March 23, 2016 verified second supplemental complaint.

In the hope that you will be the first to support the convening of a roundtable discussion between constitutional scholars, bar associations, and “good government” groups on the constitutional and legal significance of the causes of action presented by our March 23, 2016 verified second supplemental complaint – and the record thereon – I am furnishing this e-mail to all the many in that category who were recipients of my April 29<sup>th</sup> e-mail to Mr. Schwarz, with a request that they add their support.

Thank you.

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**From:** Center for Judicial Accountability [<mailto:elena@judgewidth.org>]  
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**To:** 'oaksR@assembly.state.ny.us'  
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**Subject: Restoring constitutionality and lawfulness to NY's budgeting process -- & overriding the "force of law" judicial pay raises**

Dear Ways and Means Ranking Member Oaks –

Thank you for giving me the opportunity to speak with you, at length, on Wednesday, March 23<sup>rd</sup>, at the Capitol. I look forward to continuing productive dialogue.

The verified second supplemental complaint in the Center for Judicial Accountability's citizen-taxpayer action, which I presented that morning in Albany Supreme Court, by an order to show cause with a stay and TRO, challenges the 2016-2017 fiscal year budget. It lays out much of what I summarized to you when we spoke. As promised, here's the link to the webpage on which it is posted: <http://www.judgewatch.org/web-pages/searching-nys/budget/3-23-16-osc-2nd-supp-complaint.htm>

As the verified second supplemental complaint is lengthy, may I suggest you start by reading:

- (1) the 12<sup>th</sup> cause of action (at pp. 36-53) "Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards – and the Constitution";
- (2) the 13<sup>th</sup> cause of action "Chapter 60, Part E of the Laws of 2015 is Unconstitutional, *As Written...*", particularly its Parts D & E (at pp. 60-67); and
- (3) the 16<sup>th</sup> cause of action "Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, *as Unwritten and as Applied*" (pp. 80-85).

As to the basis upon which Acting Supreme Court Justice McDonough struck the TRO relief from the order to show cause, allowing you and your legislative colleagues to proceed with unconstitutionally "amended" budget bills, sham conference committees, and behind-closed-doors budget deal-making -- greenlighting the Governor's slush-fund Legislative/Judiciary Budget Bill #S.6401/A.9001 and \$27,000,000+ in funding for unconstitutional, statutorily-violative, and fraudulent judicial salary increases that will take effect automatically on April 1<sup>st</sup> – you will find the answer in my yesterday's letter to him, also posted on the webpage. Judge McDonough's response, not denying or disputing anything I said, is also posted.

I am furnishing this e-mail to your legislative colleagues – who, with you, can and must prevent funding of the unconstitutional, statutorily-violative, and fraudulent judicial pay raises – and enact legislation to override them. THERE IS STILL TIME!

Thank you.

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