CENTER for JUDICIAL ACCOUNTABILITY, INC.

Post Office Box 8101Tel: 914-421-1200E-Mail: mail@judgewatch.orgWhite Plains, New York 10602Website: www.judgewatch.org

Elena Sassower, Director

May 8, 2023

TO: National Public Radio Public Editor Kelly McBride

RE: Complaint against New York Public Radio for journalistic fraud, most recently

by its reporting on New York's FY2023-24 state budget & the Senate confirmations of New York Court of Appeals Associate Judge Rowan Wilson as Chief Judge and Former Solicitor General Caitlin Halligan as Associate Judge

I am director and co-founder of the New York-based non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA).

For years I have been interacting with New York Public Radio journalists, furnishing them with *prima facie*, documentary EVIDENCE of systemic corruption within New York's three government branches and by its highest constitutional and public officers, for their independent verification and report. NONE have ever denied or disputed the accuracy of anything I have presented, but ALL have uniformly suppressed EVERYTHING, including by eliminating me from their reporting of events wherein I am the game-changing participant and an obvious expert. They have done this with knowledge that they are covering up what citizens most need to know about their government and public officers – and rigging elections. This replicates, identically, conduct of New York's other public media, its for-profit press, and its non-profit and supposedly non-partisan internet newsrooms. The documentary proof of this is posted on CJA's website, www.judgewatch.org, accessible from the left side-panel "Press Suppression". The direct link to its menu page is here.

The New York Public Radio reporters whose names currently appear on the roster of the <u>Legislative</u> <u>Correspondents Association (LCA)</u> are:

- (1) New York Public Radio Albany Bureau Chief Karen DeWitt, so employed since 1990. My EVIDENCE-laden e-mails to her span back to 1993¹;
- (2) <u>WNYC Albany Bureau Chief Jon Campbell, also writing for its Gothamist</u>, soemployed since <u>December 2021</u>. Before that, from May 2011, he covered the Capitol for <u>Gannett</u>, working out of its Albany bureau and eventually becoming its <u>New York State Team editor for the USA Today Network</u>. My EVIDENCE-laden e-mails to him span from June 2011².

¹ These can be accessed from CJA's webpage for the LCA and a supplementing webpage for Ms. DeWitt.

² These can be accessed from CJA's webpages for the <u>LCA</u> and <u>Gannett</u>.

This complaint against Ms. DeWitt and Mr. Campbell focuses on their journalistic fraud³ with respect to TWO major and overlapping 2023 state government stories: the FY2023-24 New York state budget and the New York State Senate confirmations of the nomination of New York Court of Appeals Associate Judge Rowan Wilson to be its chief judge and the nomination of former New York Solicitor General Caitlin Halligan to be a Court of Appeals associate judge. It does this by comparing their journalism with the six e-mails I sent to the LCA roster of reporters that includes them. Such comparison establishes that their largely duplicative journalism is not merely substandard, but indefensible:

- knowingly and deliberately concealing, *in toto*, the unconstitutionality, unlawfulness, fraudulence, and larceny of the FY2023-24 state budget;
- knowingly and deliberately concealing, *in toto*, the Senate's fraud by its confirmations of Judge Wilson and Ms. Halligan;
- knowingly and deliberately concealing that Judge Wilson, as a Court of Appeals association judge, and Ms. Halligan as a New York solicitor general, had each corrupted those public offices, precluding their confirmations to higher office.

The first five of these six e-mails I also sent to WNYC's "non-profit newsroom" <u>Gothamist</u> and to WNYC – and the recipients of these are also properly included in this complaint and, especially:

(3) WNYC's Brian Lehrer, who hosts a daily radio show bearing his name – and to whom I sent numerous EVIDENCE-laden e-mails over the years⁴ since my first, on August 28, 2018, whose subject line was: "Behind-the-scenes of tonight's Democratic AG candidates debate – Challenging the brazen lies & distortion of the AG's constitutional function – WITH EVIDENCE";

The term "journalistic fraud" was given prominence, if not coined, by the New York Times in its May 11, 2003 front-page confession about Jayson Blair "CORRECTING THE RECORD: Times Reporter Who Resigned Leaves Long Trail of Deception" — prompting two journalism professors, each lawyers, to propose a cause of action for journalistic fraud as viable under the First Amendment: "Journalistic Malpractice: Suing Jayson Blair and the New York Times for Fraud and Negligence", 14 Fordham Intellectual Property, Media & Entertainment Law Journal 1, (2003). I so-tested that cause of action, twice, in two major lawsuits, the first against The New York Times (2006-2008), the second against Gannett (2010-2013) — and neither had any defense to it, or to the further cause of action of "institutional reckless disregard for truth", whose viability I also sought to test, also proposed by two journalism professors, one a lawyer, "Institutional Reckless Disregard for Truth in Public Defamation Actions against the Press", 90 Iowa Law Review 887 (March 2005). The cases were each defended by litigation fraud of Times and Gannett attorneys, respectively, and "thrown" by fraudulent judicial decisions of New York's courts, rubber-stamped on appeal. The full records of these landmark cases — and my attempts to secure press report and scholarship about them — is posted on CJA's website, directly accessible here and here.

These can be accessed from CJA's webpage for Mr. Lehrer.

- (4) WNYC's Brigid Bergin, a senior reporter of its "People and Power desk" who regularly guests hosts The Brian Lehrer Show and writes for the Gothamist, to whom I sent numerous EVIDENCE-laden e-mails⁵ since my first, on June 15, 2021, whose subject line was: "Behind-the-Scenes: Testing the fitness of the Manhattan D.A. candidates, with EVIDENCE public corruption & the grand jury responsibilities of the D.A.s office";
- (5) New York Public Radio Editor in Chief and Senior Vice President Audrey Cooper, who "leads the newsroom and live radio talk shows that power WNYC and Gothamist", to whom, prior to the five e-mails I sent her this year, I sent an October 15, 2022 e-mail, whose subject line was: "Your election reporting of the 2022 races for governor, attorney general, comptroller, & state legislators & the corruption-eradicating lawsuit CJA v. JCOPE, et al (Albany Co. #904235-22), rebutting so much of your one-sided, partisan journalism";
- (6) WNYC Chief Content Officer Andrew Golis, who "leads all content efforts from editorial strategy and program development...across WNYC News, WNYC Radio, and WNYC Studios, the organization's podcasting and national program distribution arm" to whom, prior to the five e-mails I sent him this year, I sent the same October 15, 2022 e-mail as I sent to Editor in Chief Cooper.

The third of my five e-mails to <u>Gothamist</u> and WNYC was on March 2, 2023, with the subject line: "Gov Hochul's 30-Day Amendments, Due Tomorrow – Returning the Budget to its Constitutional Rails & Removing its Larcenies & Non-Fiscal, Non-Revenue-Producing Policy". Its brief message closed with the following:

"If this is not a story you will investigate and report, please forward this promptly to New York Public Radio President & CEO LaFontaine Oliver and EVERY member of the 'Board of Trustees' and 'Honorary Board' listed on New York Public Radio's '<u>LEADERSHIP</u>' webpage for their evaluation of your news judgment and discharge of your public responsibilities." (capitalization and hyperlink in the original).

I, therefore, <u>expressly</u> request that as part of your investigation of this complaint, you investigate whether this third e-mail was so-forwarded, so that ALL who condoned and colluded in the subsequent manufacture of New York Public Radio's agenda-driven, corruption-perpetuating journalism, profoundly and irreparably damaging New York's constitutional and lawful governance and its People, are held accountable, consistent with the <u>NPR Ethics Handbook</u>, and <u>your job as public editor</u> to ensure that NPR is true to its "mission to present fair, accurate and comprehensive information in service of democracy".

These can be accessed from CJA's webpage for New York Public Radio.

THE COMPLAINT

Five days after New York Governor Cathy Hochul's February 1, 2023 submission to the Legislature of her executive budget, I sent the LCA roster of reporters a February 5th e-mail with the subject line: "Prepping for the Legislature's Budget Hearings – & 'Blowing the Whistle' on the Legislature's OWN budget", additionally sending it to Ms. DeWitt and Mr. Campbell by the February 5th e-mail I sent to Gothamist and WNYC. The primary-source, documentary EVIDENCE these furnished was the EVIDENCE-rich written testimony I had submitted for the Legislature's February 5th "public protection" budget hearing.

Three weeks later, I sent the LCA roster a February 26th e-mail with the subject line: "The Legislature's OWN Budget & 38 Questions for Stewart-Cousins & Heastie about it & about Gov Hochul's Legislative/Judiciary Appropriation Bill #S.4001/A.3001 expanding it", also additionally sending it to Ms. DeWitt and Mr. Campbell by the February 26th e-mail I sent to Gothamist and WNYC. The primary-source, documentary EVIDENCE these furnished was the EVIDENCE-rich written testimony I had submitted for the Legislature's February 15, 2023 "local government officials/general government" budget hearing.

A week later, I sent the LCA roster a March 2nd e-mail with the subject line: "Gov Hochul's 30-Day Amendments, Due Tomorrow – Returning the Budget to its Constitutional Rails & Removing its Larcenies & Non-Fiscal, Non-Revenue-Producing Policy". The primary-source, documentary EVIDENCE it newly furnished was my February 27th e-mail to Governor Hochul, with an included February 27th FOIL request, to which the Lieutenant Governor and the new Budget Director were cc'd. The concluding words of this March 2nd e-mail to the LCA roster were: "I am available to answer your questions. What are you waiting for? Please furnish to your editors." This was expanded in the March 2nd e-mail I sent to Gothamist and WNYC, to which Ms. DeWitt and Mr. Campbell were recipients, by the concluding paragraph, as above-quoted:

"If this is not a story you will investigate and report, please forward this promptly to New York Public Radio President & CEO LaFontaine Oliver and EVERY member of the 'Board of Trustees' and 'Honorary Board' listed on New York Public Radio's 'LEADERSHIP' webpage for their evaluation of your news judgment and discharge of your public responsibilities." (capitalization and hyperlink in the original).

No one contacted me – and nothing in New York Public Radio's subsequent journalism gave the slightest hint that the FY2023-24 state budget might be unconstitutional, unlawful, fraudulent, or larcenous, let alone ALL four and massively. To the contrary, all its articles and radio and television reporting and commentary made it appear that the state budget and how it was unfolding were perfectly lawful. The following are illustrative:

From Ms. DeWitt:

- "Governor Hochul's Budget Priorities Rejected by the Legislature, Creating Tension for Final Two Weeks" (New York NOW/March 17, 2023);
- "New York state budget talks intensify as deadline looms"
 (NY Public Radio/March 20, 2023);
- "Budget will be late, Hochul says" (NY Public Radio/March 30, 2023);
- "New York state budget stalled over bail reform changes" (NY Public Radio/April 4, 2023);
- "NY budget not expected for another week as lawmakers pass a second extension" (NY Public Radio/April 10, 2023).

From Mr. Campbell:

- "The New York state budget will be late (again), Gov. Hochul says" (Gothamist/March 30, 2023)
- "Already late, Gov. Hochul and lawmakers punt NY budget to next week" (Gothamist/April 3, 2023)
- "New York Still Doesn't Have a State Budget. What's Next?" (New York NOW/April 7, 2023)
- "To make sure workers get paid, Hochul and NY lawmakers face tight deadline on budget extension" (Gothamist/April 7, 2023)
- "New York's state budget is late. That's just fine with Gov. Hochul" (Gothamist/April 12, 2023).

From Mr. Lehrer:

- "Methane, Climate and the New York State Budget" (WNYC/April 4, 2023);
- "<u>Albany Negotiations: Discovery Reform?</u>" (WNYC/April 13, 2023).

From Ms. Bergin:

• "NY lawmakers balking at plan to boost small-dollar campaign donations. Supporters are pushing back" (Gothamist/March 2, 2023);

- "Budget Time in Albany" (WNYC/March 15, 2023, with Jon Campbell);
- "Lawmakers keep program to combat big money in NY politics in budget plans, for now" (Gothamist/March 23, 2023).

ALL this was largely indistinguishable from the journalism of other LCA reporters and other press outlets and replicated how ALL had reported on past budgets, year, after year, after year, comparably ignoring all my EVIDENCE-laden e-mails as to the unconstitutionality, unlawfulness, fraud, and larceny of those budgets. Two such prior e-mails – to which Ms. DeWitt and Mr. Campbell were recipients – are:

- my March 31, 2016 e-mail with the subject line: "Have you read what the NYS Constitution has to say about the NYS budget?" and
- my March 21, 2020 e-mail with the subject line: "Gov & Legislative Leaders get GOOD NEWS during this Coronavirus Emergency: Simplifying the policy-packed NYS budget is EASY, as 6 of the Gov's 7 'Article VII Bills' are UNCONSTITUTIONAL".

My next two 2023 e-mails to the LCA roster and to <u>Gothamist</u> and WNYC then alerted them that the budget's flagrant unconstitutionality and other aspects of unconstitutional state governance was attributable to Judge Wilson's corruption as a Court of Appeals associate judge, in 2019-2020 and 2022, and that Ms. Halligan's corruption as New York's former solicitor general in 2001-2002 had contributed to this by engaging in and perpetuating the *modus operandi* of attorney general litigation fraud, carried out by the solicitor general on appellate levels:

- my April 16th e-mail with the subject line: "Is it a 'hearing' or a 'meeting'? Request to testify vs Rowan Wilson's confirmation as chief judge & Caitlin Halligan's confirmation as associate judge plus FOIL request", additionally sent to Ms. DeWitt and Mr. Campbell by my April 16th e-mail to the Gothamist and WNYC. The primary-source, documentary evidence it furnished was my EVIDENCE-rich April 16th e-mail to the Senate Judiciary Committee's 19 members, requesting to testify in opposition to both Judge Wilson and Ms. Halligan based upon their corruption that I summarized and substantiated, fully, by casefile evidence two cases that came before Judge Wilson and one that was defended by former Solicitor General Halligan;
- my April 17th e-mail with the subject line: "AGAIN: Request to testify vs Rowan Wilson's confirmation as chief judge & Caitlin Halligan's confirmation as associate judge & the duties of the Senate Judiciary Committee", additionally sent to Ms. DeWitt and Mr. Campbell by my April 17th e-mail to Gothamist and WNYC. The primary source, documentary evidence it furnished was my April 17th e-mail to the Senate Judiciary Committee's 19 member's, identifying that I had not received any

response to my April 16th e-mail to them and reiterating the dispositive significance of the three cases I had furnished in support of my request to testify in opposition.

Notwithstanding these e-mails proved the fast-track, fraudulent fashion in which the Senate Judiciary Committee was proceeding, Ms. DeWitt and Mr. Campbell – like their colleagues – ALL falsely made it appear as if the Committee was appropriately, and with due regard, reviewing Judge Wilson and Ms. Halligan and their records:

From Ms. DeWitt:

- "Senate Committee OK's Hochul's choice for chief judge amid questions about rape ruling" (NY Public Radio/April 17, 2023);
- "<u>Hochul's Latest Choice for Chief Judge Approved by Senate Committee</u>" (New York NOW/April 17, 2023);
- "<u>Hochul judicial pick Caitlin Halligan's record reviewed at Senate committee hearing</u>" (NY Public Radio/April 18, 2023);
- "<u>Hochul sends second court pick to Senate; Republican may sue</u>" (NY Public Radio/April 18, 2023).

From Mr. Campbell:

• "Who is Rowan Wilson? He's set to become NY's first Black chief judge" (Gothamist/April 18, 2023).

They thereby concealed the serious and substantial content of my April 16th and April 17th e-mails, as for instance,

- (1) that the Senate Judiciary Committee had NOT publicly announced ANY "hearing" on Judge Wilson's confirmation or Ms. Halligan's confirmation;
- (2) that the Senate Judiciary Committee had NOT scheduled any witnesses to testify on April 17th, other than Judge Wilson, nor to testify on April 18th, other than Ms. Halligan;
- (3) that the Senate Judiciary Committee had NOT responded to my written requests to testify in opposition and that the EVIDENCE I had furnished in substantiation of my opposition testimony was dispositive that Judge Wilson and Ms. Halligan could NOT be confirmed.

They ALSO concealed what they themselves had witnessed on April 17th:

- (4) that NOT a single Senate Judiciary Committee member questioned Judge Wilson about the two cases involving the state budget and pay raises, both his own and the legislators', that my April 16th and April 17th e-mails particularized as establishing his corruption as a Court of Appeals associate judge with links to the case records;
- (5) that immediately before the Senate Judiciary Committee members voted, I stood up and orally requested to be permitted to testify and that what they heard, <u>as security</u> guards surrounded me and escorted me out, was as follows:

<u>Me</u>: "Judge Wilson is a corrupt judge and I've furnished the evidence of this to every member of the Committee with a request to testify against him under oath. May I testify in his presence so that he can respond? May I testify as to his corruption, of which I have furnished you with evidence. Will you furnish my statement to the full Senate?"

<u>Chair Hoylman</u>: "The meeting is still going on, please."

[someone saying, perhaps one of the guards: "This is not the forum."]

<u>Me</u>: "Of course it is the forum. This is the forum to examine whether or not he is fit for elevation as chief judge. He must be removed as associate judge for his corruption in office and I wish to testify as to the evidence of this.

He has thrown cases suing you for your corruption involving the budget and the pay raises of which you are beneficiaries. You are acting on your self interest. He has corrupted his office and has corrupted state governance and you are colluding with him. You are benefiting from what he has done. You are sued for corruption involving the budget. The statement about which I wish to testify was furnished to each member of this Committee. It's posted on the website of the Center for Judicial Accountability, of which I am the co-founder and director – www.judgewatch.org – top panel 'Latest News'."

<u>Chair Hoylman</u>: "If you can leave your statement with us."

<u>Me</u>: "You already have it. It was sent to every member and I furnished you a hard copy, with a request to testify. He has corrupted his office. Cases are perfect trails, there is a record – and the record is unequivocal. He corrupted his office to benefit himself and you.

And it's time that the press did some investigation of what they have been suppressing for years.

I wish to testify and tomorrow against Ms. Halligan for corrupting her office as solicitor general."

<u>Chair Hoylman</u>: "Thank you so much. We do have her testimony, as it were. It was submitted, as I understand."

Likewise, they concealed what they had witnessed on April 18th, namely, that not a single Senate Judiciary Committee member questioned Ms. Halligan about the case my April 16th and April 17th emails particularized, with EVIDENCE, as establishing her corruption as solicitor general, involving the New York State Commission on Judicial Conduct and its corrupting of "merit selection" to the Court of Appeals.

Having thus covered up, *in toto*, the scandal of the Senate's confirmation of Judge Wilson and Ms. Halligan – much as, in previous years, they had covered up the scandal of other Senate confirmations to the Court of Appeals and to other courts – Ms. DeWitt and Mr. Campbell returned to chugging out more journalism covering up, *in toto*, the unconstitutionality of the budget. As, for instance,

From Ms. DeWitt:

- "Hochul and Legislature to enter fourth week without a state budget" (NY Public Radio/April 19, 2023);
- "New York state lawmakers poised to pass a fifth spending extender on Monday as budget talks drag on" (NY Public Radio/April 21, 2023).

From Mr. Campbell:

• "Gov. Hochul drops core of ambitious housing plan as budget talks drag on" (Gothamist/April 18, 2023, with David Brand).

On April 23rd, in a final attempt to staunch the torrent of fraudulent concealment by the LCA press as to the unconstitutionality of what was going on, I sent a sixth and final e-mail:

• my April 23, 2023 e-mail with the subject line: "The FY2023-24 state budget is 'OFF THE CONSTITUTIONAL RAILS', including by its insertion of policy which you are attributing as the reason the budget is 'late'". The new primary-source, documentary evidence it furnished were the responses I had received to the February 27th FOIL request that I had sent to the LCA roster six weeks earlier by my March 2nd e-mail and to Gothamist and WNYC by my March 2nd e-mail.

The concluding paragraph <u>expressly</u> requested that if LCA reporters were not going to investigate and report on the FY2023-24 state budget's unconstitutionality by its insertion of policy – and such other features as its "three person in a room", behind-closed-doors, amending-of-bills budget-

dealmaking – that they forward the e-mail to "supervisory editors and to management responsible for the truthfulness and accuracy of their reporting". Did Ms. DeWitt and Mr. Campbell do so?

And did New York Public Radio supervisory editors and management give them the "green light" to thereafter continue to conceal, *in toto*, the state budget's unconstitutionality, unlawfulness, fraud, and larceny – ALL of which they did by their subsequent journalism, as, for example,

From Ms. DeWitt:

- "<u>Hochul says New York state budget agreement is getting closer</u>" (NY Public Radio/April 25, 2023);
- "NY lawmakers fail to reach deal on budget that is now four weeks late" (NY Public Radio/April 25, 2023);
- "Channeling Wayne Gretzky, Hochul says 'At least I took the shot' on failed housing plan" (NY Public Radio/April 26, 2023);
- "<u>Hochul announces conceptual agreement on four-week late state budget</u>" (NY Public Radio/April 27, 2023);
- "Lawmakers expected to hold late night session debating final New York state budget bills" (NY Public Radio/May 2, 2023);
- "New York budget approved with some wins and losses for Hochul" (NY Public Radio/May 3, 2023);
- "Did the public get enough time to examine state budget bills? Some groups and lawmakers say no" (NY Public Radio/May 3, 2023);
- "There's unfinished business to hash out in the final month of the New York legislative session" (NY Public Radio/May 8, 2023).

From Mr. Campbell:

- NY's minimum wage could increase to \$17. Progressives want it higher" (Gothamist/April 25, 2023);
- "Hochul, NY lawmakers near deal to reopen 14 NYC charter schools" (Gothamist/April 27, 2023, with Jessica Gould);
- "NY has a tentative budget deal. Here's what in and what's out" (Gothamist/April 27, 2023, with Giulia Heywood);

- "Lawmakers start passing NY's \$229B budget. No one is happy about it" (Gothamist/May 1, 2023);
- "Meet the Big Ugly: The NYS budget has free buses, a cannabis crackdown, and more!" (Gothamist/May 2, 2023);
- "Gov. Hochul, surrounded by prosecutors, celebrates NY bail law changes" (Gothamist/May 3, 2023);
- "What's to know about NY's ban on gas hookups in new homes, apartments" (Gothamist/May 4, 2023);

<u>From Mr. Lehrer – interviewing Mr. Campbell:</u>

- "What's Holding up the State Budget?" (April 26, 2023);
- "Budget Brief: Hochul Announces \$229 Tentative Budget Deal" (April 28, 2023);
- "New York State's Budget Deal" (May 2, 2023).

Did supervisory editors and management, upon reading my April 23rd e-mail, with its links to my February 27th FOIL request and to the responses of Governor Hochul, her Division of the Budget, the Legislative Bill Drafting Commission, the Senate and the Assembly for records as to how the Governor's five policy-packed DRAFT FY2023-24 budget bills had morphed into ACTUAL budget bills and for records of their findings of fact and conclusions of law with respect to my March 18, 2020 letter to then Governor Andrew Cuomo demonstrating the fraud by which non-revenue-producing, non-fiscal policy was inserted into the budget, reflective of its unconstitutionality – a fraud replicated by the 2023-24 budget bills – NOT believe this needed to be IMMEDIATELY investigated and reported, with a call to me as to whether Governor Hochul had responded, as promised, by April 24th. Here is that April 24th response, stating that after "diligent search", she had located NO responsive records.

CONCLUSION

The foregoing is simply a snapshot of New York Public Radio's fraudulent journalism during a three-month span, in 2023, focused on New York's FY2023-24 state budget and the Senate confirmations to New York's highest court of two judges, including its chief judge. There is SO much more to say – and I look forward to speaking with you directly about the foregoing and answering the many questions you will doubtless have. You may be assured of my complete cooperation.

Thank you.

cc: Karen DeWitt
Jon Campbell
Brian Lehrer
Brigid Bergin
Audrey Cooper
Andrew Golis