

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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April 2, 2013

TO: Justin C. Levin, Records Access Officer
& FOIL Counsel to Governor Andrew M. Cuomo

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: FOIL REQUEST:

- (1) the Legislature's "General State Charges" for Fiscal Year 2013-2014, with Certifications of Temporary Senate President Skelos & Assembly Speaker Silver;
- (2) Records Pertaining to the Governor's Signing of S.2601-A/A.3001-A, if Signed by Him;
- (3) Video of the Commission on Judicial Compensation's July 20, 2011 Public Hearing in Albany;
- (4) Video, Audio, or Transcript of Commission on Judicial Compensation's July 11, 2011 Public Meeting.

This follows up CJA's March 30, 2013 e-mail entitled "NOTICE TO THE GOVERNOR: Do Not Sign Budget Bill S.2601-A/A-3001-A – Appropriations for the Judiciary & Legislature", a copy of which we sent you.

Attached is another copy of the March 29, 2013 letter to the Governor's Chief of Staff, Josh Vlasto, which that e-mail enclosed, as it is a FOIL request to you for the Legislature's "General State Charges" for fiscal year 2013-2014, including the certifications thereof signed by Temporary Senate President Skelos and Assembly Speaker Silver, which, pursuant to Article VII, §1 of the New York State Constitution, they would have been required to submit to the Governor on or before December 1, 2012.

As we have received no response from Chief of Staff Vlasto or anyone else on the Governor's behalf to our March 29, 2013 letter, we take this opportunity to request copies of all records establishing the date, time and witnesses to the Governor's signing of S.2601-A/A.3001-A, if, in fact, he did sign it, as well as a copy of the Governor's signature and official seal thereon.

* **Center for Judicial Accountability, Inc. (CJA)** is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

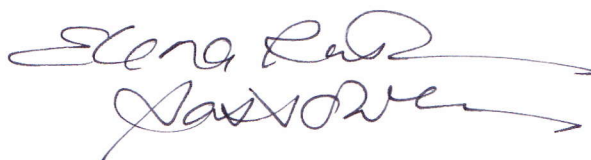
Finally, please be advised that the one and only public hearing of the Special Commission on Judicial Compensation, in Albany on July 20, 2011 – at which I, six other members of the public, and Budget Director Megna all testified in opposition to judicial pay raises – is NOT accessible from the Commission's website, <http://www.judicialcompensation.ny.gov>. Nor has it been accessible since shortly before the Commission issued its August 29, 2011 "Final" Report. [According to the message, "Windows Media Player cannot find the file. If you are trying to play, burn, or sync an item that is in your library, the item might point to a file that has been moved, renamed, or deleted."]

If the Governor's office, through which the Commission on Judicial Compensation operated, is not planning to restore the video of the July 20, 2011 hearing to the Commission's website, where it had been accessible for at least three weeks before being rendered inaccessible, we request to know why – and request a copy so that we may post it on our website, www.judgewatch.org. Indeed, since the summer of 2011, we have had a special webpage devoted to the July 20, 2011 hearing. Here's the direct link: <http://www.judgewatch.org/web-pages/judicial-compensation/7-20-11-commission-hearing.htm>.

Also, kindly confirm, in writing, that there is neither a transcript, video, or audio recording of the Commission's first public meeting, held on July 11, 2011 in New York City – as none of these were ever posted on the Commission's website.

Pursuant to FOIL (Public Officers Law §89.3), your response is required "within five business days" of your receipt of this request. Kindly e-mail it to me at elena@judgewatch.org.

Thank you.

Handwritten signature of Elena Riva in black ink, consisting of two lines of cursive script.

Enclosure: March 29, 2013 letter to Chief of Staff Josh Vlasto

cc: Josh Vlasto, Chief of Staff to Governor Cuomo
Mylan Denerstein, Counsel to Governor Cuomo
Robert L. Megna, Budget Director to Governor Cuomo
Katie Sherwin, administrative staff to Governor Cuomo's judicial screening committees
& to the defunct 2011 Commission on Judicial Compensation
Robert Freeman, Executive Director, Committee on Open Government
The Public & The Press

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March 29, 2013

TO: Josh Vlasto, Chief of Staff to Governor Andrew Cuomo

FROM: Elena Ruth Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: The Governor's Duty to Disapprove S.2601-A/A.3001-A (Judiciary/Legislative Appropriations Bill), Pursuant to Article VII, §4 & Article IV, §7 of the New York State Constitution, Because the Legislature Violated Express Constitutional and Statutory Safeguards, as well as its Own Rules, in Passing It

This follows up my two phone calls earlier today – at 11:10 am & 4:00 pm – requesting to speak with you and leaving substantive messages with Lauren McCabe, who told me that the Governor's counsel, Mylan Denerstein, was not in.

I look forward to speaking with you – or Ms. Denerstein – as soon as possible, anytime during the weekend – as it is essential that the Governor take steps to protect the public purse from judicial salary increases he KNOWS to be statutorily-violative, fraudulent, and unconstitutional, as would be evident were he to disgorge such findings of fact and conclusions of law as he made – or as were made on his behalf by Ms. Denerstein or other counsel – with respect to CJA's October 27, 2011 Opposition Report and the four causes of action of our public interest lawsuit based thereon – *CJA, et al. v. Cuomo, et al.*

Please be advised – and I hereby give notice – that the Legislature's passage of the budget for fiscal year 2013-2014 violated express constitutional and statutory safeguards and its own rules – particularly its passage of Judiciary appropriations bill S.2601-A/A.3001-A – the same bill as contains the Legislature's appropriations.

To the extent you are unaware of these violations, we have steadily chronicled them, since February 6th, by the primary-source materials posted on our website, www.judgewatch.org, on the webpage devoted to "Securing Legislative Oversight & Override of the judicial pay raises...". Increasingly, these have pertained to violations affecting not only S.2601-A/A.3001-A, but the entire budget. Our new webpage "Holding Government Accountable for its Grand Larceny of the Public Fisc", which, as I told Ms. McCabe, I have been constructing since I got up this morning to aid the Governor in

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understanding the situation, showcases these violations no less prominently. Both webpages are accessible *via* the “Latest News” top panel of our website. Here’s the direct link: <http://www.judgewatch.org/web-pages/cja/latest-news.htm>

I particularly draw to your attention:

- (1) CJA’s March 22nd letter to the General Budget Conference Committee & its Subcommittee on “Public Protection”, Criminal Justice, & Judiciary entitled “The Public’s Right to Know the ‘Process’ Behind Adoption of Senate Resolution 818 and Assembly Resolution 812”;
- (2) the videos of what took place on the floor of the Senate – and at the Senate Finance Committee, called from the floor – on March 24th and March 26th;
- (3) CJA’s March 28th e-mail to Assembly Members David Buchwald and Steve Katz entitled “Annotations for SUCCESSFUL due process-procedural objections on Assembly floor”, highlighting “report” and “memo’ requirements; and
- (4) CJA’s March 28th letter to the Secretary of State and Assembly Public Information Office, requesting ‘...Such Filed ‘Written Report(s)’ as the Joint Budget Conference Committee and its Subcommittees Rendered”.

These are must-reads – as is CJA’s March 24th letter to Senators entitled “Why You Must Reject S.2601: The Appropriations Bill for the Judiciary”, which, on March 26th, we replicated, essentially *verbatim*, for our letter to Assembly Members pertaining to A.3001. Also, a must-read, CJA’s March 11th letter, summarizing and elaborating upon my testimony at the Legislature’s February 6th budget hearing on “public protection” – a copy of which we enclosed with our March 19th letter to the Governor. That letter, to which we received no response from the Governor, was entitled:

“Assisting the Legislature in Discharging its Constitutional Duty: The People’s Right to Know the Dollar Cost of the Judiciary Budget & of the Appropriations Bill for the Judiciary & to be Protected from ‘Grand Larceny of the Public Fisc’ by Unidentified, Unitemized Judicial Pay Raises, whose Fraudulence, Statutory-Violations, and Unconstitutionality are *Proven by Documentary Evidence in Your Possession & the Legislature’s*” (underling & italics in March 19th letter).

Pursuant to Article VII, §4 of the New York State Constitution, budget bill S.2601-A/A.3001-A does not become “law immediately without further action by the governor”. Rather, it is “subject to his approval as provided in section 7 of Article IV”.

Based on the foregoing correspondence and videos posted on our website, it is the Governor’s duty to New York’s citizens and taxpayers NOT to sign S.2601-A/A.3001-A. Indeed, CJA’s March 24th

/26th letters to Senators and Assembly Members not only presented four decisive grounds for rejecting S.2601-A/A.3001-A as pertains to its judiciary portion, but a sufficient ground for rejecting its legislative portion. This, in footnote 2, stating:

“...The budget that Temporary President Skelos and Assembly Speaker Silver submitted to the Governor for the Legislature under a November 30, 2012 coverletter contained no ‘General State Charges’ – and the appropriations for the Legislature in S.2601/A.3001, replicating the leadership’s budget submission, contains none.

In response to our request, the Secretary of the Senate purported that the leadership’s budget submission is ‘not available pursuant to Senate Rules’. The Assembly’s Public Information Office furnished the budget submission, but without ‘General State Charges’, thereafter stating that it has ‘no records that are responsive’. The correspondence is posted on our website.

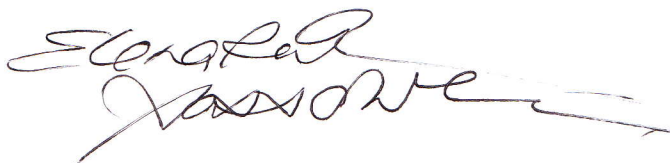
As legislators and legislative staff do receive ‘fringe benefits’ – ‘pension contributions, Social Security, health, dental vision and life insurance’, etc. – the absence in S.2601/A.3001 of ‘General State Charges’ for the Legislature renders the bill materially incomplete and constitutes a further ground to reject it, over and beyond its deficiencies pertaining to the Judiciary.” (March 24th letter to the Senators, underlining in the original).

By copy of this letter to Budget Director Robert Megna, we request that he identify where the Legislature’s “General State Charges” are to be found. To obtain same, including the certifications thereof by Temporary Senate President Skelos and Assembly Speaker Silver, this letter is also being e-mailed, as a FOIL request, to the Governor’s records access officer.

Needless to say, the fact that the Governor provided no “Commentary” to the Legislature’s budget, in contrast to his superficial “Commentary” to the Judiciary’s budget, only underscores that IF his Division of the Budget examined the Legislature’s budget, it was with even less care than its palpably deficient examination of the Judiciary’s budget, endorsed by the Governor’s “Commentary”. Such makes it all the more appropriate that the Governor now discharge his check-and-balances duty with respect to the budgets of these two separate branches, which should not have been, but were, joined on the same bill.

In view of the serious and substantial nature of this letter and its political and other ramifications for the Governor, kindly furnish it to him, without delay.

Thank you.

A handwritten signature in black ink, appearing to read "Josh Vlasto". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

cc: Mylan Denerstein, Counsel to Governor Cuomo
Budget Director Robert L. Megna
Justin C. Levin, Records Access Officer
& FOIL Counsel to Governor Cuomo
The Public & The Press