

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Saturday, March 23, 2013 6:22 PM
To: latimer@nysenate.gov; buchwaldd@assembly.state.ny.us; katzs@assembly.state.ny.us
Cc: mallison@nysenate.gov; paternol@assembly.state.ny.us;
weisfeldd@assembly.state.ny.us; roithmayra@assembly.state.ny.us;
keegant@assembly.state.ny.us; keegan.taram@gmail.com; josephmahearn@gmail.com
Subject: Part 4: Info to Assist You in Your History-Making Presentations on the Senate & Assembly Floor.

Dear Senator Latimer & Assembly Members Buchwald and Katz,

As promised, here's the next drafted question. As you can see from the below, I respectfully request that you bring with you to the floor of the Senate & Assembly CJA's October 27, 2011 Opposition Report & verified complaint in our public interest lawsuit based thereon – full copies of which I furnished to Senator Latimer & Assemblyman Buchwald. No legislator reviewing those documents – and addressing their content – could argue for funding of the judicial salary increases recommended by the Commission on Judicial Compensation's August 29, 2011 Report.

QUESTION #4: Can Appropriations Bill S2601/A3001 be Amended to Include a Line-Item for the Judicial Salary Increase that the Legislature could then Approve?

The answer is no.

Article VII, §4 of the New York State Constitution states:

“The legislature may not alter an appropriation bill submitted by the governor except to strikeout or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items in the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and the judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.” (underlining added).

This would appear to mean that the Legislature may freely amend appropriations bills for the Judiciary and Legislature since, unlike the Governor's other appropriations bills, no portion of those bills become law automatically. Rather, because they go back to the Governor, in their entirety, and are subject to his veto or objection as to items, pursuant to Article IV, §7 of the State Constitution, any aspect may be altered.

Nevertheless, even were the Legislature to secure from the Judiciary the dollar amount of the second phase of the judicial salary increase recommended by the Commission on Judicial Compensation – figures that would have to be “approved by the court of appeals and certified by the chief judge”, pursuant to Article VII, §1 of the State Constitution – it could not be lawfully approved by the Legislature. The reason is because the Commission on Judicial Compensation's August 29, 2011 Report

– which is the sole basis for the judicial salary increase – is flagrantly violative of Chapter 567 of the Laws of 2010 which created the Commission, in addition to being fraudulent and unconstitutional.

The proof of this is the Center for Judicial Accountability’s October 27, 2011 Opposition Report to the Commission’s August 29, 2011 Report, written by its director, Elena Sassower, who testified about it at the February 6, 2013 budget hearing on “public protection”, handing up a copy, along with a copy of the verified complaint in the Center’s public interest lawsuit based thereon, suing New York’s highest constitutional officers and three government branches for collusion against the People on the judicial pay raise issue. Here is a copy of the Center’s Opposition Report and verified complaint for review by all members of Senate and Assembly.

Any member of this body who would be heard on behalf of the judicial salary increase must be required to respond to the particularized facts and law presented by the Opposition Report and lawsuit based thereon, as they are devastating and dispositive.

Based thereon, this Legislature must, as Ms. Sassower stated at the February 6th hearing, override the second phase of the judicial salary increase which will otherwise take effect automatically on April 1, 2013 – as well as the third phase, which will otherwise take effect automatically on April 1, 2014. In support thereof and to secure the voiding of the first phase that took effect on April 1, 2012 and to recover the more than \$27.7 million dollars of public monies expended on the first phase, which, unless voided, will be an annually recurring expense, in perpetuity, findings of fact and conclusions of law must be made with respect to the Center’s October 27, 2011 Opposition Report. This must be done forthwith by the Senate and Assembly Judiciary Committees in belated discharge of their oversight function pursuant to Senate Rule VII, §4(c)^[1] and Assembly Rule IV, §1(d)^[2].

Suffice to say that in the nearly 19 months since the Commission’s August 29, 2011 Report, neither the Senate nor Assembly Judiciary Committees have held any hearings on it or otherwise purported to review it to determine whether – as §1(h) of Chapter 567 of the Laws of 2010 explicitly provides – its judicial salary increase determinations should be “modified or abrogated by statute prior to April first of the year as to which their determination applies.”

[1] Senate Rule VIII, 4c states:

“ Committee oversight function. Each standing committee is required to conduct oversight of the administration of laws and programs by agencies within its jurisdiction.”

[2] Assembly Rule IV, states:

“Each standing committee shall, furthermore, devote substantial efforts to the oversight and analysis of the activities, including but not limited to the implementation and administration of programs, of departments, agencies, divisions, authorities, boards, commissions, public benefit corporations and other entities within its jurisdiction.”