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BY HAND

June 11, 1996

New York State Senate
Albany, New York

RE: Opposition to Senate Confirmation of Governor Pataki's Judicial Nominees
and, in particular, to Judge Juanita Bing Newton

Dear Senators:

We are a non-partisan, non-profit, citizens' organization, based in New York, focusing on the twin issues of judicial selection and discipline--on the federal, state and local levels. In 1993, we testified on two separate occasions before the Senate Judiciary Committee in opposition to two of Governor Cuomo's nominees to the Court of Appeals. A copy of our informational brochure, reflecting the foregoing, is attached.

The purpose of this letter is to urge you to vote against confirmation of Governor Pataki's judicial nominees and, in particular, against confirmation of Judge Juanita Bing Newton. As highlighted by our *direct, first-hand experience* with the Governor's office, over the past six-months, these judicial nominations are the product of a process which is sham, dishonest, and thoroughly contemptuous of the rights of the public.

This letter is necessitated by the fact that the Senate Judiciary Committee does *not* permit the public to testify at its hearings confirming the Governor's nominees to courts other than the Court of Appeals. According to David Gruenberg, counsel to the Chairman of the Senate Judiciary Committee, the public is *permitted only* to observe while the Senators purport to question the judicial nominees.

Although we apprised Mr. Gruenberg of our opposition to Senate confirmation of Judge Newton, by letter to him dated April 18, 1996, he has only now informed us that he has *not* distributed it to the members of the Senate Judiciary Committee nor made its contents known to them. Mr. Gruenberg has stated that it is up to us to communicate individually with the Senate Judiciary Committee members. The consequence of this is obvious. Unless we undertake the arduous, time-consuming, and costly effort of directly presenting our opposition to the Senate Judiciary Committee members, there will be *no* questions based thereon at the confirmation hearings.

This letter, therefore, serves that purpose--as well as the broader purpose of making known to the Senate, as a whole, the serious and substantial basis upon which it must oppose not only Judge Newton's confirmation, but the confirmation of all of Governor Pataki's judicial nominees.

EX "J-3"

In announcing his 26 judicial nominations two weeks ago, Governor Pataki publicly proclaimed that each of the nominees had been found "highly qualified" by his Temporary Judicial Screening Committee (*New York Law Journal*, 5/31/96, at p. 2). This claim is a deceit upon you and upon the People of this State. As demonstrated herein, the Temporary Judicial Screening Committee is a "front" for the Governor's office, which rigs the ratings.

Annexed hereto are copies of our aforesaid April 18th letter to Mr. Gruenberg (Exhibit "A"), as well as our April 29th letter to the Governor's counsel, Michael Finnegan (Exhibit "B")¹. As those letters make eminently clear, Governor's office withholds from the public *basic* information about the membership of the Temporary Committee and about its procedures. It also prevents the public from communicating with the Temporary Committee, except through the Governor's office. According to the Governor's office, it has no telephone number for the Committee.

Consequently, on April 11th, when the *New York Law Journal* reported that the Governor's Temporary Committee was interviewing Judge Juanita Bing Newton for reappointment to the Court of Claims, the only way we could advise the Committee of information bearing upon her unfitness was by calling the Governor's office. Yet, no one from the Temporary Committee ever called us back--despite our repeated phone messages, left at the Governor's office, requesting it to do so.

It was for this reason that we first contacted the Senate Judiciary Committee and wrote our April 18th letter to Mr. Gruenberg (Exhibit "A")--with a copy to Mr. Finnegan. Summarized at pages 2-4 therein was our serious and substantial opposition to Judge Newton, which we were unable to present directly to the Temporary Committee.

The basis for our opposition was Judge Newton's self-interested betrayal of the public in her capacity as a judicial member of the New York State Commission on Judicial Conduct. We described how Judge Newton has used her position to protect high-ranking, politically-connected judges from the consequences of their misconduct by permitting *fully documented* complaints against them--including complaints of heinous criminal acts---to be dismissed by the Commission, *without investigation*.

We further stated that such unlawful conduct, violating the Commission's investigative mandate under Judiciary Law §44.1, had been challenged by us in an Article 78 proceeding. The petition in that proceeding specifically requested that the members of the Commission be referred for "appropriate criminal and disciplinary investigation" for their complicity in high-level judicial corruption.

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The April 29th letter is annexed without accompanying exhibits--all of which are in the possession of the Senate Judiciary Committee. As to the April 18th letter, two of its exhibits are included: Exhibit "D"--being our Letter to the Editor, entitled "Commission Abandons Investigative Mandate", published in the August 14, 1995 *New York Law Journal*--and Exhibit "F"--being the first three pages of our December 15, 1995 letter to the Assembly Judiciary Committee.

We also stated that the Commission had survived our challenge *only* because it had defended itself by litigation misconduct before a Supreme Court justice, who dumped the case in a fraudulent decision of dismissal. We emphasized that although Judge Newton has been on notice of the Commission's litigation misconduct and of the Supreme Court's fraudulent decision, of which the Commission was the beneficiary, she has refused to meet her ethical and professional duty to take corrective steps. Such an individual, we argued, is "unworthy of any judicial office".

On May 7th, having received *no* response whatever from either the Governor's office or the Temporary Committee to our April 18th and April 29th letters (Exhibits "A" and "B"), we hand-delivered to the Governor's office a copy of the Article 78 file to substantiate our serious allegations against Judge Newton². This, in addition to the petition signatures of almost 1,500 New Yorkers calling upon Governor Pataki "to appoint a State Commission and hold public hearings on judicial corruption and political manipulation of judgeships in the State of New York". Still, *no* response from the Governor's office or the Temporary Committee.

This remains true to date. Indeed, following the Governor's May 30th announcement of his 26 judicial nominations--including his nomination of Judge Newton--we telephoned the Governor's office, requesting information about the Temporary Committee's "highly qualified" ratings, including documentation to substantiate the nominees' credentials. None of our repeated calls have been returned.

This continued refusal of the Governor's office to provide the public with information *reasonably* requested about the Temporary Committee and its ratings suggests that it has something to hide. Either there is *no* committee or its screening procedures are such as would *not* withstand public scrutiny. This is the inevitable conclusion to be drawn from our unanswered April 18th and April 29th letters (Exhibits "A" and "B").

Moreover, the Temporary Committee's "highly qualified" rating of Judge Newton--in the face of the disqualifying conduct described by our April 18th letter and substantiated by the Article 78 file--makes evident that the Temporary Committee, if it exists, is either incompetent or, more likely, that it knows nothing of our opposition because the Governor's office has deliberately kept it "in the dark".

This may be the *modus operandi* by which the Governor has obtained his 26 judicial nominees, purportedly all "highly qualified". The Governor simply prevents his Temporary Committee from receiving any information that would impact adversely upon the pre-ordained rating for the nominees he favors.

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On that same date, we also transmitted a copy of the Article 78 file to the most unwilling hands of Mr. Gruenberg.

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Indeed, one of the questions posed in our unresponded-to April 18th and April 29th letters (Exhibits "A", p.2 and "B", pp.3-4) is why Governor Pataki, who is well within the second year of his Administration, is still employing the Temporary Committee, set up under his Executive Order #11, rather than the State Judicial Screening Committee, envisioned by his Executive Order #10. It may well be that it is because the State Committee would not as easily lend itself to being controlled and manipulated by the Governor's office.

In view of the serious and substantial evidence herein presented, the public can have no confidence in the behind-closed-doors process that has produced the Governor's judicial nominees and, in particular, Judge Newton. We believe that before any confirmations take place, the Senate must call upon the Governor's office to explain why it has not responded to the shocking correspondence annexed hereto (Exhibits "A" and "B"). Indeed, unless the Senate obtains responses to the specific questions raised by those letters, it cannot determine whether the Temporary Judicial Screening Committee functions as an independent entity, whose ratings are worthy of respect.

Should the Senate nonetheless proceed to confirm the current judicial nominees, we respectfully request that the Senate Judiciary Committee, in its questioning of Judge Newton at its confirmation hearing, require her to address the issues identified at page 3 of our April 18th letter (Exhibit "A"), to wit, that she

"...demonstrate that the dismissal of our Article 78 proceeding against the Commission on Judicial Conduct is not a fraud--and justify the constitutionality of the Commission's [self-promulgated] rule, 22 NYCRR §7000.3, as written and as applied--challenged in that proceeding" (emphasis in the original)

and do so by meeting the specific factual and legal issues, set forth in the first three pages of our December 15, 1995 letter to the Assembly Judiciary Committee (See Exhibit "A").

In view of Senate Majority Leader Bruno's expressed concern that the Commission on Judicial Conduct function properly--as recited at page 3 of our April 18th letter (Exhibit "A")--we would expect him to ensure that if and when Judge Newton's nomination is discussed on the Senate floor, she has responded to the evidence, presented by the Article 78 file, that the Commission is "not merely 'ineffective' or dysfunctional, it is corrupt."

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.