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OPEN LETTER

January 3, 2013

TO: ALL 63 NEW YORK STATE SENATORS

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

RE: TRANSFORMING THE SENATE ON DAY 1 OF ITS 236th LEGISLATIVE SESSION BY APPROPRIATE RULES & LEADERSHIP

On Wednesday, January 9, 2013, you will cast your most important votes of the Senate's 236th legislative session when you vote for a Temporary Senate President and new Senate rules.

This is your opportunity – indeed, obligation – to end the Senate's dysfunction, borne of Senate rules which subjugate you to the dictates of the Temporary Senate President and impede your ability to exercise independent judgment on behalf of your constituents.

Article III, §9 of the New York State Constitution, pertaining to the Legislature, reads, in pertinent part:

“Each house shall determine the rules of its own proceedings, ...; shall choose its own officers; and the senate shall choose a temporary president...”

Thus, your practice on opening day of voting first for a Temporary Senate President and, thereafter, on rules is not only backwards, but arguably unconstitutional. This is concealed by the failure of Senate rules to enumerate the order of proceedings for opening day, in contrast to Assembly Rule VI entitled “ORGANIZATION OF THE HOUSE”, which conspicuously omits from its §2 listing of the sequence of opening day proceedings when rules are supposed to be adopted, even as its §4 recognizes that the new Assembly, in fact, has NO rules. Surely, Senators have access to scholars of our State's Constitution who can be consulted for their opinions – and we hereby request that this be done, with their opinions publicly presented.

* **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.

On December 26, 2012, we faxed and e-mailed a letter to Senate Republican Conference Leader Dean Skelos and Democratic Conference Leader Andrea Stewart-Cousins entitled “ENSURING AN INFORMED ASSEMBLY VOTE ON ASSEMBLY LEADERSHIP & ASSEMBLY RULES: Your Response to CJA’s December 7, 2012 Letter to the Independent Democratic Conference on ‘ACHIEVING A ‘FISCALLY RESPONSIBLE, FULLY FUNCTIONAL SENATE’” – which we also e-mailed to all Senators, with a message that a coverletter would be forthcoming. This is that coverletter.

We draw your attention to page 5 of our December 26, 2012 letter, stating:

“Because the Senate rules determine the ability of senators to properly represent their constituents, discharge their legislative duties, and promote accountability of the senators and the Senate as a whole, we call upon each of you [Conference Leaders Skelos and Stewart-Cousins] to promptly and publicly release the rules you will be proposing for the upcoming Senate session, with an accompanying memorandum identifying the extent to which they change the current Senate rules to incorporate the recommendations of the April 21, 2009 Republican Minority Report of the Temporary Committee on Rules and Administration Reform and of Resolution #357 of Senators Krueger and Squadron.” (underlining in the original).

Nothing prevents individual Senators from introducing their own resolutions of new Senate rules, as was done, in 2011, when Senators Kreuger and Squadron introduced Resolution #357, incorporating recommendations of the 2009 Minority Report of the Temporary Committee on Rules and Administration Reform. Indeed, doing so would be in keeping with the empowerment of rank-and-file legislators that is at the core of those recommendations. Consequently, by this coverletter we call upon Senators, individually and collectively, to introduce long-overdue rules reform resolutions at the January 9th opening session.

Additionally, and in keeping with the goal of those recommendations to transform our Legislature into a properly functioning, deliberative body, where votes follow upon meaningful discussion and debate, we call upon Senators, individually and collectively, to ensure that the Senate’s election of a Temporary Senate President, is not, as it routinely is, decided by a party-line-voice vote, without discussion or debate.

For this reason our December 26, 2012 letter requested that Conference Leaders Skelos and Stewart-Cousins publicly respond to a series of questions and requests not only pertaining to Senate rules, but to Temporary Senate President Skelos’ “official misconduct and criminal fraud upon the taxpaying public” involving his cover-up of the corruption of the Commission on Judicial Compensation and, with it, the corruption of New York’s state judiciary, whose result – this fiscal year alone – is the theft of \$27.7 million taxpayer dollars for judicial pay raises that are not only unconstitutional and statutorily-violative, but fraudulent, and which have embroiled the Senate in a lawsuit brought by us “on behalf of the People of the State of New York and the Public Interest”, to which the Senate and

Mr. Skelos are named defendants.

Should Conference Leaders Skelos and Stewart-Cousins not publicly respond to these questions and requests – preferably from the floor of the Senate on January 9th, as is their duty, in light of their seriousness – we call upon the other 61 Senators to introduce resolutions demanding that they do so and, additionally, to take to the Senate floor on January 9th and state their view as to what Temporary Senate President Skelos was duty-bound to do, as their representative:

- “(a) upon receiving CJA’s May 23, 2011 letter, addressed to him and the other three appointing authorities of the Commission on Judicial Compensation – Governor Andrew Cuomo, Assembly Speaker Sheldon Silver, and Chief Judge Jonathan Lippman – apprising them that 53-days into the Commission on Judicial Compensation’s 150-day tenure, it was inoperative and inaccessible to the public; asking whether they agreed that systemic judicial corruption was an ‘appropriate factor’ for the Commission’s consideration in determining the adequacy of judicial compensation, pursuant to the statute; and calling upon them to take steps to ensure official investigation of the evidence of systemic judicial corruption that witnesses had presented and proffered at public hearings before the Senate Judiciary Committee in 2009, which were aborted and as to which there had been no investigation, no findings, and no committee report¹;
- (b) upon receiving the dispositive document on which the Verified Complaint rests – CJA’s October 27, 2011 Opposition Report, addressed to him, Governor Cuomo, Assembly Speaker Silver, and Chief Judge Lippman, detailing the unconstitutionality, statutory violations, and fraud of the Commission on Judicial Compensation’s August 29, 2011 Report recommending 27% judicial pay raises;
- (c) upon receiving CJA’s March 2, 2012 letter, addressed to him, Governor Cuomo, Assembly Speaker Silver, and Chief Judge Lippman, calling upon them to disgorge their findings of facts and conclusions of law with respect to CJA’s October 27, 2011 Opposition Report²;
- (d) upon receiving CJA’s March 30, 2012 Verified Complaint, served upon him, Governor Cuomo, Assembly Speaker Silver, and Chief Judge Lippman on April 5,

¹ CJA’s May 23, 2011 letter is recited at ¶¶73-76 of the Verified Complaint and is Exhibit A-1 to the October 27, 2011 Opposition Report.

See, also, CJA’s follow-up June 23, 2011 and June 30, 2011 letters, also sent to Temporary Senate President Skelos, are recited at ¶¶78-83 of the Verified Complaint. They are Exhibits B-2 and C-3 to the October 27, 2011 Opposition Report.

² The March 2, 2012 letter is annexed as Exhibit Q to the Verified Complaint and summarized at ¶¶121-125, 138-139 thereof.

2012, with a letter requesting review by ‘independent counsel’.” (at p. 3).

We further, call upon Senators to obtain and publicly present such findings of fact and conclusions of law as were made by Temporary Senate President Skelos, a lawyer, with respect to our October 27, 2011 Opposition Report and our March 30, 2012 Verified Complaint – or as were made by Senate counsel – so that, belatedly, appropriate steps are taken by the Senate to protect the public purse and uphold the public’s rights.

Specifically, we call upon the other Senators to themselves:

“refer the evidence of unconstitutionality, statutory violations, and fraud, presented by the Verified Complaint to all relevant Senate committees having oversight responsibilities – including the Senate Judiciary Committee, the Senate Finance Committee, and possibly, the Senate Committee on Investigations and Oversight.” (at p. 3, underlining in the original).

This, to initiate a legislative override of the second and third phases of the judicial pay raises, scheduled to take otherwise effect, automatically, on April 1, 2013 and April 1, 2014, respectively, as well as to secure the other meritorious relief expressly sought and mandated by our October 27, 2011 Opposition Report:

(2) repeal of Chapter 567 of the Laws of 2010 creating the Commission on Judicial Compensation;

(3) referral of the members of the Commission on Judicial Compensation to criminal authorities for prosecution;

(4) appointment of a task force to investigate the documentary and testimonial evidence of systemic judicial corruption, infesting supervisory and appellate levels and the Commission on Judicial Conduct – which the Commission on Judicial Compensation unlawfully and unconstitutionally ignored, without findings, in recommending judicial pay raises.

As reflected by our December 31, 2011 letter, ALL the documentation you require to discharge your constitutional responsibilities in support of the foregoing is posted on our website, www.judgewatch.org, accessible *via* the top panel “Latest News”. Suffice to close by quoting from the testimony of former Senator Franz Leichter at the February 26, 2009 public hearing of the Senate’s Temporary Committee on Rules and Administrative Reforms:

“The rules and procedures of the two Houses are not arcane matters of little interest to the public, Unquestionably the unanimous poor reviews of the work of the Legislature, documented in numerous reports and scathing editorials, is based on

disdain and even derision on how the Legislature functions. Process is important. If the process is flawed the work product – legislation – will suffer.

The rules changes required for a properly functioning process are not unknown, complex or difficult to implement. They have been identified in reports, recommendations and the proposals of a few legislators. I want to focus on what my experience has shown is a major problem – the AUTOCRATIC power invested in the leader of each House.

The power of the Speaker and the Majority Leader is so vast that they control all aspects of how the Legislature functions. They appoint committee chairs, members' committee assignments, determine what bills are brought to the floor for a vote, decide who gets additional pay – lulus --, award staff allowances, make office assignments and equipment, authorize use of facilities, allocate member items – that is earmarks --, authorize mailings, and so on. They also control the Legislative Budget, which is not itemized as are the Executive and Judicial Budgets, and its opaqueness allows the shifting of monies at the leaders' whim. In addition, the State's porous campaign finance laws allow them to raise millions in contributions which they can fairly easily transfer to legislators who are in competitive election districts – but only if they have followed the Leaders' dictates. The leaders' domination over the process is absolute.

The remaining 210 legislators are basically reduced to supernumeraries. They are like the spear carriers in Aida. They fill the stage but their voices are not heard. I once proposed – only partly in jest – that the State might save money by having just one Assembly member and one Senator. I may be drawing the picture very starkly but essentially I am correct. The 'three men in a room', the end of session avalanche of bills, the failure to address pressing economic and social issues, the refusal to bring to the floor bills most members support, the marginalization of the minority in each House all flow from the leaders' outsized power.

Sadly, since I was first elected to the Legislature the power of the leadership has grown and the institution has become less democratic in its operation..." (written testimony, capitalization in the original).³

This abomination was then summed up by former Senator Seymour Lachman, in a single sentence:

"...To say that the only vote that matters, the only one that counts, is the vote for leader is only a slight exaggeration." (written testimony, at p. 1),

³

See Mr. Leichter's full written testimony, with recommendations, enclosed herewith.

with former Brennan Center staffer and author of its 2004 report "*The New York State Legislative Process: An Evaluation and Blueprint for Reform*", Jeremy Creelan, thereafter reflecting on your legacy in reforming the rules:

"...there's a temptation to think of [rules reform] as one of the least significant projects that any...any legislature might take on. It's the arcane rules of the chamber.

But...if these reforms are real and if they're thorough and full, the members...will look back on their lives in public service and could well see those reforms as their greatest contribution to the public, and to public service."
(transcript, pp. 63-64).

The People of New York are counting on you to make that contribution – and will rightfully hold you accountable should you fail to do so.

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

- Enclosures:
- (1) CJA's December 26, 2012 letter to Senate Republican Conference Leader Dean Skelos & Senate Democratic Conference Leader Andrea Stewart-Cousins
 - (2) written testimony of former Senator Franz Leichter, February 26, 2009 hearing of the Senate's Temporary Committee on Rules & Administration Reform

TESTIMONY OF FORMER SENATOR FRANZ S. LEICHTER TO THE
TEMPORARY COMMITTEE ON RULES AND ADMINISTRATION REFORM
ON FEBRUARY 26, 2009

I appreciate that the Senate Majority has taken the initiative to examine- and hopefully revise- the rules and operation of the Senate and to do it in an open manner soliciting the recommendations of the public. In my years in the Legislature, and since, this is unprecedented and long overdue. I congratulate Majority Leader Smith and the members of this Committee for your initiative.

We all recognize that New York State is in a financial and broader economic crisis- as is the Nation. I was in the Senate during the 1970s when we grappled with the near bankruptcy of New York City. The current crisis is far more challenging. To deal with it requires the work, contribution and commitment of all our elected officials. Unfortunately, the Legislature, as it functions now, is ill suited to assume its responsibility as a partner with Governor Paterson in dealing with this crisis. It will be up to the challenge only after undertaking fundamental reforms that result in a more open and democratic legislative process and restores public trust in the Legislature

The rules and procedures of the two Houses are not arcane matters of little interest to the public. Unquestionably the unanimously poor reviews of the work of the Legislature, documented in numerous reports and scathing editorials, is based on disdain and even derision on how the Legislature functions. Process is important. If the process is flawed the work product- legislation- will suffer.

The rules changes required for a properly functioning process are not unknown, complex or difficult to implement. They have been identified in reports, recommendations and the proposals of a few legislators. I want to focus on what my experience has shown is a major problem – the AUTOCRATIC power invested in the leader of each House.

The power of the Speaker and the Majority Leader is so vast that they control all aspects of how the Legislature functions. They appoint committee chairs, members' committee assignments, determine what bills are brought to the floor for a vote, decide who gets additional pay- lulus- , award staff allowances, make office assignments and equipment, authorize use of facilities, allocate member items- that is earmarks-, authorize mailings and so on. They also control the Legislative Budget, which is not itemized as are the Executive and Judicial Budgets, and by its opaqueness allows the shifting of monies at the leaders' whim. In addition, the State's porous campaign finance laws allow them to raise millions in contributions which they can fairly easily transfer to legislators who are

in competitive election districts- but only if they have followed the Leaders' dictates. The leaders' domination over the process is absolute.

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Sadly, since I was first elected to the Legislature the power of the leadership has grown and the institution has become even less democratic in its operation. I remember as a first term, backbencher in the minority debating and defeating a chairman's bill, even though the majority and minority leader spoke in favor of the measure. That would be unthinkable today. Admittedly, this is also due to the spreading cancer of rank partisanship. But the leaders' domination accentuates the partisanship and political gamesmanship.

Here are a few changes which will empower legislators to fulfill their proper role without neutering the leaders.

1. Select committee chairs and ranking minority member by each party conference or, as the Congress does, by seniority subject to conference affirmation. Either way the conferences - not the leaders - will make the choice. Doing it by seniority has the advantage that members will not jump from committee to committee and thus become more knowledgeable on their committee's issues;
2. Members' committee assignments should be approved by the conference or a subcommittee established for this purpose;
3. Members of each House should get the same basic staff and services;
4. Committees should have majority and minority staff with the committee chair and ranking member authorized to hire their staff. The Legislative Budget must set forth the amounts appropriated for each committee;
5. All bills voted out of committee should be brought to the floor for a vote;
6. Eliminate the disparity in allowances to committee chairs and ranking members. All committees are important. The justification for the disparity is the extra work required. I don't see a proper basis for assessing which chair does, or is expected to do, more work. This change will also discourage a chair leaving to become chair of a committee with which he has no familiarity just to receive a larger lulu and will limit the leader's power to reward obeisance with greater pay;
7. Itemize the legislative Budget and stop the disgrace of hiding legislative expenditures;
8. If member items are to continue they should be equalized among members of each House;
9. Make use of conference committees when each House passes different versions

of the same subject matter bill.

These are not radical proposals. They are common sense recommendations. And they are good politics. In 1910 the House of Representatives- Democrats and Republicans- rebelled against the autocratic control of Speaker Joe Cannon by taking away from him powers similar to ones now exercised by the Assembly Speaker and the Senate Majority Leader.

If New York State legislators- Democrats and Republicans- fail to take advantage of this opportunity to bring the fresh air of democracy into their Houses they will remain essentially emasculated. I abjure you to meet this challenge by empowering legislators, making the Legislature responsive, effective, open and transparent in its operations. If the Senate shows the way the Assembly will follow.

I wish you well in your work and thank you for giving me the opportunity to express myself once again on what I consider such an important matter. I have felt strongly about this issue because I cherish the Legislature for its importance and what it can be. My years there have convinced me that legislators are capable and want to contribute to the State and serve their constituents. Today their service is frustrated. The whole is less than the sum of the parts. You can change this.