

Center for Judicial Accountability, Inc. (CJA)

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Sent: Friday, October 6, 2017 10:37 AM
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Subject: Suing to Secure Constitutional Governance: Surer & More Expedient than a Constitutional Convention.
Attachments: 4-18-17-to-rockefeller-institute.pdf; 7-20-17-to-rockinst.pdf; 8-10-17-open-ltr.pdf

In my haste, I inadvertently failed to include Bob Schulz as a recipient of my yesterday's e-mail, which I hereby do – urging you to contact him about his litigation to restrict delegate selection for the constitutional convention to prevent control by the political parties, incumbent public officers, and lobbyists:

<http://blog.timesunion.com/capitol/archives/240883/safe-act-constitutional-convention-suits-form-bob-schulz-double-header/>. Additionally, I failed to include the recipients of my April 18, 2017 e-mail to the Rockefeller Institute – and to reference and annex my follow-up July 20, 2017 to those same recipients.

My yesterday's e-mail is below -- slightly revised, but essentially what I sent yesterday. Please supersede.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) [<mailto:elena@judgewatch.org>]
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Subject: Suing to Secure Constitutional Governance: Surer & More Expedient than a Constitutional Convention.

TO: Thomas W. Bergdall, Esq., Senior Associate/Citizens' Union
John M. Nonna, Esq, Member/New York State Bar Association Committee on the New York State Constitution

Thank you, both, for your informative presentations yesterday evening at the Citizen Union forum on the New York State constitutional convention ballot question, which you delivered notwithstanding the disappointing turn-out at Pace Law School, in White Plains. What a loss for all those who did not show up – the law students and faculty of Pace Law School, in addition to the larger Westchester community.

I very much appreciated the opportunity, both during and after the forum, to share with you my somewhat different perspective of the issues, born of my direct, first-hand experience, spanning more than a quarter of a century – including, in 1997, when I was privileged to participate with Bob Schulz, one of New York's foremost citizen-activists, in his herculean efforts to educate the public about, and secure a YES vote for, that year's constitutional convention ballot question – which he did, in the most breathtaking fashion, essentially single-handedly.

As discussed, although I will be voting YES for a constitutional convention, I no longer believe a constitutional convention to be the surest or most expeditious route to achieving essential constitutional revision. The surest, most expeditious route is by litigation to compel a constitutionally-functioning Legislature – such as we do not now have -- with Senate and Assembly committees developing and perfecting legislation and engaged in oversight, including of constitutional provisions in need of deletion and revision. I have undertaken such litigation, on behalf of the public interest and the People of the State of New York, by two citizen-taxpayer actions, the first commenced on March 28, 2014, and the second commenced on September 2, 2016 – the latter, encompassing the former, and unfolding in Albany Supreme Court. The full record of each is posted on CJA's website, www.judgewatch.org, accessible *via* the prominent homepage link "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance".

From the posted litigation records you can ascertain, for yourselves, that Attorney General Schneiderman – himself a defendant, representing his fellow defendants – the Legislature, Governor Cuomo, Comptroller DiNapoli, and Chief Judge DiFiore – has had NO defense: (1) to the causes of action pertaining to the unconstitutional functioning of the Legislature, resulting from its rules, vesting autocratic powers in the Temporary Senate President and Assembly Speaker, who have hijacked and taken control of the legislative budget; (2) to the causes of action challenging the constitutionality of the Legislature's behind-closed-door party conferences, substituting for open committee deliberations, hearings, and votes; (3) to the causes of actions challenging the constitutionality of the behind-closed doors three-men-in-a-room budget dealmaking of the Governor, Temporary Senate President, and Assembly Speaker. Indeed, Attorney General Schneiderman has had NO defense to ANY of the causes of action – as to which the posture of the second citizen-taxpayer action, as likewise the first, is one of SUMMARY JUDGMENT to the plaintiffs, as to each cause of action.

The culminating pleading in the second citizen-taxpayer action, addressed to this fiscal year, 2017-2018, was presented by my March 29, 2017 order to show cause. It is an appropriate "starting point" for your examination of my contention that litigation – not a constitutional convention – can most expeditiously achieve our shared goal of an accountable, constitutionally-functioning state government. It also focally rests on the Court of Appeals' 2004 decision in *Pataki v. Silver*, to which Mr. Nonna referred during his presentation yesterday.

Below is my April 14, 2017 e-mail to Citizens Union, furnishing it with the direct link to CJA's webpage for the March 29, 2017 order to show cause: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/9-2-16-osc-complaint/3-29-17-osc.htm> -- and inviting and urging its participation, either by an *amicus curiae* brief – or by a motion to intervene – thereby enabling it to advance its own powerful, but ignored, reports on "Spending in the Shadows". I received no response. Consequently, at Citizens Union's May 3, 2017 annual meeting, I brought multiple copies of the April 14, 2017 e-mail with me which I gave to, and discussed with, Citizens Union's now Interim Executive Director Alan Rothstein, Citizen Union's presently on-leave Executive Director Dick Dadey, and Citizens Union Director of Public Policy and Programs Rachel Elana Bloom. Again, I received no response – and this, notwithstanding the eloquent presentation of Citizen Union Board Chair Randy Mastro at the annual meeting about the new, more

"aggressive" stand that Citizens Union was going to take to secure good-government. In his words, "we are going to litigate when we see something the government does wrong".

As Citizens Union Interim Executive Director Rothstein is a non-voting member of the New York State Bar Association's Committee on the New York State Constitution – of which Mr. Nonna is a fellow member -- attached are my April 18, 2017 and July 20, 2017 e-mail to the Rockefeller Institute and its six-member team of "Constitutional Convention Experts", Henry Greenberg, chair of the State Bar Committee on the Constitution, among them, pertaining to *Silver v. Pataki* and the March 29, 2017 order to show cause – to which I received no response from him and essentially nothing from the other recipients, including two other members of the State Bar Committee on the Constitution, Christopher Bobst and Peter Kiernan. Indeed, it appears from the Committee's website: <http://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=71177>, that it rendered NO report on Article VII of the State Constitution pertaining to the budget, which, by my April 18, 2017 e-mail, I had requested.

There is much, much more for me to say, in substantiation of my comments to each of you yesterday. Suffice, for present purposes, to add that I furnished a copy of the March 29, 2017 pleading, *in hand*, to Senator Mike Gianaris, a panelist in Citizens Union's May 3, 2017 "civic conversation" – "A Day in the Life of NY Legislators", which followed directly upon the conclusion of the annual meeting: http://www.citizensunion.org/civic_conversations. I gave the pleading to Senator Gianaris not only because he is referred to and extensively quoted therein, but because he is a Harvard Law School graduate, well able to assess its serious and substantial nature – and to examine the full litigation record, consistent with what I said, on January 30, 2017, in testifying at the Legislature's budget hearing, in the presence of Senate Finance Committee Ranking Member Liz Krueger: "There are lawyers galore in the Senate and Assembly, including on the committees. They know how to read a pleading, the verified complaint, and to examine the record. And the record establishes an entitlement to summary judgment to the plaintiffs. Again, the budget is off the constitutional rails." I would also add that, on March 29, 2017, while in Albany, I ran into Assembly Minority Leader Brian Kolb, who verbally abused and threatened me when I recounted to him my unsuccessful efforts to secure a meeting with him to discuss the budget, Assembly rules, and other legislative dysfunctions. Notwithstanding his Assembly leadership position, he claimed that because I was not in his Assembly district, I was not his constituent and he did not have to meet with me or respond to my communications.

All three – Queens Senator Gianaris, Manhattan Senator Krueger, and upstate/western New York Assemblyman Kolb -- the ONLY legislators you named as supportive of a constitutional convention – are, as I publicly stated yesterday, "posturers". All are "full time" legislators, without outside earned income. Were there ANY examination of their records, in office – as likewise of the records of their fellow legislators and of Governor Cuomo, Attorney General Schneiderman, and Comptroller DiNapoli, with respect to the allegations of the citizen-taxpayer action – they would be unable to secure re-election next year. That they have been re-elected again and again – as often as not in uncontested or minimally contested races – is not because there is no public campaign financing, etc., but because there is no scrutiny of their records, in office. As I stated, it is not just judicial candidates, about whom voters are unable to exercise an intelligent vote, but ALL incumbents, none of whose records are being examined and reported on by the media. As a result, the voting public has no clue that incumbents, including their own representatives, are posturers, knowingly perpetuating the very corruption they publicly decry. Potential candidates are likewise handicapped and inhibited.

On the subject of media scrutiny of the records of incumbents – such as Senator George Latimer, running for Westchester county executive – to which I referred in my public comments yesterday – and the game-changing electoral significance of the citizen-taxpayer action in throwing open EVERY electoral race involving an incumbent state legislator and the statewide elected officers, attached is my August 10, 2017 OPEN LETTER entitled "The NYS Reform Party of Curtis Sliwa MUST Rescind its Endorsement of, & Party Line to, Senator George Latimer for Westchester County Executive & the Other Parties Must Follow Suit – Unless they Deem Corruption in Office a Qualification". It is also accessible from CJA's homepage, *via* the prominent link: "OUTING CORRUPT & COLLUSIVE INCUMBENTS and Ending their Road to Re-Election & Higher Office in 2017, 2018, and Beyond – WITH EVIDENCE!" The direct link to CJA's webpage for the OPEN LETTER, posting all substantiating EVIDENCE, including links to the citizen-taxpayer lawsuit records and the VIDEOS of my testimony before the Legislature at its budget hearings on February 6, 2013, January 30,

2017, and January 31, 2017 – each time before Senator Krueger – is here: <http://www.judgewatch.org/web-pages/elections/2017/8-10-17-open-ltr.htm>.

Needless to say, the August 10, 2017 OPEN LETTER is germane to the candidacy of Bronx Senator Ruben Diaz, a member of the Senate's Finance Committee, Judiciary Committee, and Senate Committee on Investigations and Government Operations, running this year to be elected to a New York City Council seat, as well as the candidacies of Queens Assemblyman Francisco Moya, a member of the Assembly Ways and Means Committee, and Bronx Assemblyman Mark Gjonaj, a member of the Assembly Committee on Local Governments, each also running for City Council seats. As members of those legislative committees, what are their responses to my testimony at this year's budget hearings – and to the citizen-taxpayer action to which they are defendants, sued for their unconstitutional, unlawful, and fraudulent conduct?

I look forward to the benefit of your expert evaluation of CJA's pending citizen-taxpayer action – and its potential to make far-reaching constitutional, good-government reform. I am available to answer your questions and to assist you, to the fullest.

Thank you.

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Subject: OPPORTUNITY/OBLIGATION -- citizen-taxpayer action: March 29, 2017 OSC for declaration of unconstitutionality & unlawfulness of NYS budget -- returnable April 28, 2017

TO: CITIZENS UNION

Dick Dadey, Executive Director
Rachel Elana Bloom, Director of Public Policy & Programs
Ethan Geringer-Sameth, Public Policy & Program Manager

This follows my phone conversation the other day with Alan Rothstein, chair of Citizens Union's State Affairs Committee, about Citizens Union's latest "*Spending in the Shadow*" report – this, on the Executive Budget for fiscal year 2017-2018 – which Mr. Rothstein principally authored with assistance from each of you. It also follows my phone conversation, a short time ago, with Executive Assistant Nelson Mallory. With both I discussed the opportunity that CJA's unfolding 2nd citizen-taxpayer action furnishes Citizens Union to substantively advance its "*Spending in the Shadows*" report.

The posture of the unfolding citizen-taxpayer action is that on March 29th I brought an order to show cause for a preliminary injunction, with TRO, addressed to the budget for fiscal year 2017-2018, which is returnable on April 28th. Here's the link to the webpage for it: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/9-2-16-osc-complaint/3-29-17-osc.htm>.

It will not take you long to review the order to show cause and recognize its potential. Please, therefore, call me as soon as you review it so that I might have the benefit of your thoughts and judgment. I have no doubt that based on Article VII, §§4, 5, 6 of the New York State Constitution and the reinforcing Court of Appeals decisions in *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 NY3d 75 (2004), and *New York State Bankers Association v. Wetzler*, 81 NY2d 98 (1993) – ALL posted on the webpage of the March 29th order to show cause – you will agree that the New York State budget is flagrantly “OFF THE CONSTITUTIONAL RAILS” and that the outcome of CJA’s March 29th order to show cause – and of the 2nd citizen-taxpayer action on which it rests – must be summary judgment for the plaintiffs, AS A MATTER OF LAW.

As I stated to both Mr. Rothstein and Mr. Mallory, I invite Citizens Union to have “a piece of the action” by filing an *amicus curiae* brief and/or by making a motion to intervene, thereby contributing its wider perspective and achieving, through the citizen-taxpayer action, adjudications of the constitutional and legal dimensions of its most recent “Spending in the Shadows” report and of its several predecessor reports – all blithely ignored by New York’s governors and legislators. Certainly, too, Citizens Union has a bully-pulpit and can easily issue press statements about the citizen-taxpayer action, as well as reach out to its large network of media and academic contacts so that the lawsuit receives both the press coverage and substantive scholarship it deserves. This apart from a discussion of it in the Citizens Union’s own excellent “Gotham Gazette” – whose March 30th article “*Three Men in a Room, Millions Outside*”, by Rachel Silberstein, I have already embodied in the lawsuit record.

Citizens Union has a powerful opportunity, if not obligation, to play a leadership role in the citizen-taxpayer action, for the benefit of ALL New Yorkers. The March 29th order to show cause for declarations of unconstitutionality and unlawfulness of the New York State budget is OPEN & SHUT – and WE WILL WIN!

Kindly forward this e-mail to Mr. Rothstein – and to all members of Citizens Union’s State Affairs Committee.

I look forward to hearing from you about the order to show cause – and as soon as possible.

Thank you.

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