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OPEN LETTER

January 3, 2013

TO: ALL 150 NEW YORK STATE ASSEMBLY MEMBERS

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

RE: TRANSFORMING THE ASSEMBLY 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 Assembly's 236th legislative session when you vote for an Assembly Speaker and new Assembly rules.

This is your opportunity – indeed, obligation – to end the Assembly's dysfunction, borne of Assembly rules which subjugate you to the dictates of the Assembly Speaker 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 assembly shall choose a speaker.”

Thus, your practice on opening day of voting first for Assembly Speaker and, thereafter, on rules is not only backwards, but arguably unconstitutional – a fact covered up by Assembly Rule VI “ORGANIZATION OF THE HOUSE”, which conspicuously omits from its §2 listing of the sequence of proceedings for opening day when rules are supposed to be adopted, even as its §4 recognizes that the new Assembly, in fact, has NO rules. Surely, Assembly members 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 31, 2012, we faxed and e-mailed a letter to Assembly Speaker Sheldon Silver and Minority Leader Brian Kolb, entitled “ENSURING AN INFORMED ASSEMBLY VOTE ON ASSEMBLY LEADERSHIP & ASSEMBLY RULES” – which we also e-mailed to all 150 Assembly members, with a message that a cover letter would be forthcoming. This is that cover letter.

We draw your attention to page 9 of our December 31, 2012 letter, stating:

“Assembly members must NOT vote for an Assembly Speaker who does NOT empower them by rules that enable them to properly represent their constituents, discharge their legislative duties, and that promote accountability of the Assembly and its members to the People of the State of New York. We, therefore, call upon each of you [Assembly Speaker Silver and Minority Member Kolb] to promptly and publicly release the Assembly rules that you will be introducing for 2013-2014, with an accompanying memorandum identifying the extent to which they change the current Assembly rules to incorporate the salutary, non-partisan recommendations of the Brennan Center reports and/or of the Senate’s defunct Temporary Committee on Rules and Administration Reform – both its April 21, 2009 Democratic majority ‘Draft Report’ and its April 21, 2009 Republican Minority Report.” (capitalization and underlining in the original).

Nothing prevents individual Assembly members from introducing their own resolutions of new Assembly rules, incorporating the Brennan Center recommendations and those of the Senate’s 2009 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 Assembly members, individually and collectively, to introduce long-overdue rules reform resolutions at the January 9th opening session.

As the goal of those recommendations is to transform our Legislature into a properly functioning, deliberative body, where votes follow upon meaningful discussion and debate, we also call upon Assembly members, individually and collectively, to ensure that the Assembly’s vote on rules, as likewise on a Speaker, is not, as it routinely is, decided by party-line-votes, without discussion or debate.

For this reason, our December 31, 2012 letter requested that Speaker Silver and Minority Leader Kolb publicly respond to a series of questions and requests not only pertaining to Assembly rules, but to “Assembly Speaker Silver’s official misconduct and criminal fraud” 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’ – ...embroil[ing] the Assembly in a lawsuit which we have brought ‘on behalf of the People of the State of

New York and the Public Interest’, to which the Assembly and Mr. Silver [are] named defendants.” (at p. 2).

Should Speaker Silver and Minority Leader Kolb not publicly respond to these questions and requests – preferably from the floor of the Assembly on January 9th, as is their duty, in light of their seriousness – we call upon the Assembly’s other 148 members to introduce resolutions demanding that they do so and, additionally, to take to the Assembly floor on January 9th to state their views as to what Speaker Silver 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, Temporary Senate President Dean Skelos, 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, Temporary Senate President Skelos, 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, Temporary Senate President Skelos, 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, Temporary Senate President Skelos, and Chief Judge Lippman on

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 Assembly Speaker Silver, 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.

April 5, 2012, with a letter requesting review by ‘independent counsel’.” (at p. 3).

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

Specifically, we call upon Assembly members to themselves:

“refer the evidence of unconstitutionality, statutory violations, and fraud, presented by the Verified Complaint to all relevant Assembly committees having oversight responsibilities – including the Assembly Judiciary Committee, the Assembly Ways and Means Committee, and possibly, the Assembly Committee on Governmental Operations and the Assembly Committee on Oversight, Analysis and Investigation.” (at p. 5, 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, 2012 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 Assemblyman/former Senator Franz Leichter at the February 26, 2009 public hearing of the Senate’s Temporary Committee on Rules and Administration Reform:

“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, at 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 "Sheldon Silver", with a long horizontal flourish extending to the right.

- Enclosures:
- (1) CJA's December 31, 2012 letter to Assembly Speaker Sheldon Silver & Assembly Minority Leader Brian Kolb
 - (2) written testimony of former Assemblyman/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.