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April 8, 2020

TO: Senate Records Access Officer/Secretary of the Senate Alejandra Paulino, Esq.

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

RE: FOIL/Records Request:
Senate Resolution #3108 – “ADOPTING special temporary procedures during a declared state of national state of emergency...”

The SOLE order of business of the March 29, 2020 Senate session was Senate Resolution #3108, by Senate Majority Leader Andrea Stewart-Cousins, “**ADOPTING** special temporary procedures during a declared state of national state of emergency...”. This is revealed by the 3-minute/22-second VIDEO of the March 29, 2020 Senate session – but not by the Senate’s webpage for the session: <https://www.nysenate.gov/calendar/sessions/march-29-2020/session-3-29-2020>, which neither identifies nor links Senate Resolution #3108.

Is this to conceal the fraud the Senate perpetrated in adopting the resolution?

According to the Senate webpage for the undated Senate Resolution #3108: <https://www.nysenate.gov/legislation/resolutions/2019/r3108>, which contains no listing or specificity of votes, there were two “Actions”:

“29/Mar/2020 REFERRED TO FINANCE”
“29/Mar/2020 ADOPTED”.

Why would Resolution #3108 have been “referred to Finance” – which, moreover, never met on March 29, 2020, let alone for purposes of deliberating and voting on Resolution #3108.¹ Indeed, as

¹ Pursuant to Senate Rule VII, §2(a) (4): “All meetings of committees shall be recorded by video and to the extent practicable webcast live. Video of all committee meetings shall be made available on the Senate website.” The webpages of the Senate Finance Committee show no posted VIDEO or other indicia of any meeting: <https://www.nysenate.gov/committees/finance> – or of a vote, and Senate Rule VII, § 6(a), entitled “Reports”, states: “No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member’s vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair.” (underlining added).

reflected by the VIDEO, no Senate Finance Committee meeting or report is referred-to by the two Senators visible and speaking: Senior Assistant Majority Leader Brian Benjamin, presiding over the Senate session, and Deputy Majority Leader Michael Gianaris, Esq., both members of the Senate Finance Committee and, additionally, of the Senate Rules Committee.

As reflected by the VIDEO, the entirety of their exchange with respect to Resolution #3108, which apparently was not on any “Calendar”, was as follows:

Gianaris: Mr. President, I believe there’s a privileged resolution at the desk that would authorize the Temporary President and Majority Leader to implement a system of remote voting during this emergency that we are currently facing. Can you please have the title only read and I move for its immediate adoption.

Benjamin: There is a privileged resolution at the desk. The secretary will read.

Secretary: Senate Resolution 3108 by Senator Stewart Cousins. Adopting special temporary procedures during a declared state of national state of emergency; and providing for the repeal of such provisions upon expiration thereof.

Benjamin: The question is on the resolution. All those in favor signify by saying aye. Opposed, nay. The resolution is adopted.

In so-declaring the resolution “adopted”, Senator Benjamin, who holds an MBA degree from Harvard, did not announce the vote tally, nor the number of Senators voting, nor the number in the Senate Chamber, and the only audible vote, which was aye, was seemingly that of Senator Gianaris, whose JD degree is also from Harvard.

Senate Rule XI is entitled “Amendment and Suspension of the Rules”. Its §1 reads:

“Resolution to amend or suspend the Senate Rules. No amendment to or suspension of the Senate Rules shall be considered by the Senate unless a resolution for such amendment or suspension, together with a memorandum specifying the purpose of the proposed amendment, suspension, or rescission, shall be introduced to the Committee on Rules and reported therefrom to the Senate floor. Passing of any such rules change shall require an affirmative vote of three-fifths of all Senators elected.”

Senate Rule VI is entitled “Introduction of Bills and Resolutions”. Its §9 reads:

“a. All original resolutions shall be in quadruplicate, and no original resolution may be introduced unless copies thereof first shall have been furnished, to the extent practicable, forty-eight hours prior to the time for acting on such resolution to the Temporary President and Minority Leader. All resolutions, upon introduction, shall be referred to a standing or select committee by the Temporary President or an

officer designated by the Temporary President and shall at all times remain within the exclusive control of the introducer...”

Consequently, pursuant to Senate Rule XIV “Freedom of Information”, this is to request:

- (1) records establishing compliance with Senate Rule XI, §1 and Senate Rule VI, §9a and, in particular:
 - (a) a copy of the original resolution – and records reflecting the date it was furnished to Senate Minority Leader John Flanagan, Esq.;
 - (b) records reflecting whether referral to the Senate Finance Committee was made by Temporary Senate President Stewart-Cousins or by an officer designated by her, as, for instance, Deputy Senate Majority Leader Gianaris;
 - (c) records reflecting the basis upon which the resolution was referred to the Senate Finance Committee, as opposed to the Senate Rules Committee;
 - (d) records reflecting actions taken by the Senate Finance Committee with respect to the resolution by its chair, Senator Liz Krueger, its ranking member, Senator James Seward – and votes, if any, of the Senate Finance Committee’s other members;
 - (e) records pertaining to the “exclusive control” exercised by Temporary Senate President Stewart-Cousins – specifically including by-passing any committee deliberation and vote;
 - (f) records establishing notice to the Senators that Resolution #3108 would be brought to the Senate floor for a vote on March 29, 2020 – a Sunday;
 - (g) records establishing “an affirmative vote of three-fifths of all Senators elected”;

- (2) records establishing compliance with the Senate Rules that Resolution #3108 expressly sought to suspend – but which were in full force and effect prior to the purported adoption of the resolution, these being:

Senate Rule IX, §1, ¶a:

“Every Senator shall be present within the Senate Chamber during the sessions of the Senate, unless duly excused or necessarily prevented, and shall vote on each question for which a vote is required stated from the Chair unless excused by the Senate, or unless he or she has a direct personal or pecuniary interest in the event of such question. A Senator may not refuse to vote, unless he or she be excused by the Senate, or unless he or she be interested. In order to vote on a bill on the controversial calendar, a Senator, other than the Temporary President and the Minority Leader, must be present in the Senate chamber and vote from his or her regularly assigned seat, except that a Senator acting as the Presiding Officer or Temporary President may vote from the place assigned to such officer. No Senator absent from a roll call vote shall be allowed to vote thereon; however, within the same day, a Senator required to attend a public hearing or other meeting of a standing or conference committee, or any other meeting which the Temporary President designates as appropriate, may cast his or her vote at any time prior to 5 P.M. or the adjournment of the Senate, whichever shall be later.”

Senate Rule IX, §2, ¶¶a, b, c, d, e, f:

“Quorum.

a. A majority of all the Senators elected shall constitute a quorum to do business. In case a less number than a quorum of the Senate shall convene, those present are authorized to send the Sergeant at Arms, or any other person, for the absent Senators.

b. The assent of two-thirds of the Senators elected shall be requisite to every bill appropriating the public moneys or property for local or private purposes, and to the passage of bills returned by the Governor without his or her approval.

c. On the final passage of any bill which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, three-fifths of all the members elected to the Senate shall be necessary to constitute a quorum therein.

d. If, on taking the final question on a bill, it shall appear that a constitutional quorum is not present, or if the bill requires a vote of two-thirds of all the Senators elected to pass it, and it appears that such number is not present, the bill shall retain its place on the Calendar and be again taken up in its regular order.

e. When any bill requiring the concurrence of two-thirds of the Senators, or a quorum of three-fifths thereof, is under consideration, such concurrence or quorum, as the case may be, shall not be requisite except on the question of its final passage.

f. If at any time during the session of the Senate a question shall be raised by any Senator as to the presence of a quorum, the Presiding Officer shall forthwith direct the Secretary to call the roll, and shall announce the result, and such proceeding shall be without debate; but no Senator while speaking shall be interrupted by any other Senator raising the question of a lack of a quorum, and the question as to the presence of a quorum shall not be raised more often than once in every hour unless the lack of a quorum shall be disclosed upon a roll call of the ayes and nays.

Senate Rule IX, §6:

“Call of the Senate. For the purpose of securing the attendance of Senators, a call of the Senate may be ordered at any time, but such call shall not be in order after the voting on any question has begun, nor after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to section three of this Rule, unless it shall appear upon an actual count by the Presiding Officer that a quorum is not present.”

Senate Rule IX, §7:

“Absences. In all cases of absence of Senators during the sessions of the Senate, the Temporary President or a majority of the Senators elected may take such measures as they deem necessary to secure the presence of the absentees, and in addition to suspension for a given period, may inflict such censure or penalty as they may deem just on those who shall not render sufficient excuse for their absence.”

Senate Rule III, §2:

“Immediately upon the final passage by the Senate of any bill, or concurrent resolution proposing amendments to the Constitution of the State, and concurrent resolutions proposing or ratifying amendments to the Constitution of the United States [the Presiding Officer] shall certify that the same has been duly passed or adopted, with the date thereof, together with the fact whether passed as a majority or two-thirds bill or resolution, or with three-fifths of the members present, as the case may be, as required by the Constitution and laws of the State, and deliver said bill or resolution to the Secretary.”

The most important records specifically requested, in connection with the foregoing Senate Rules, are as to the number and names of the Senators in the Senate Chamber on March 29, 2020 and voting on Resolution #3108;

- (3) records establishing the number and names of the Senators of the Senate Majority who were in Albany on March 29, 2020 – in substantiation of Senate Majority Leader/Temporary Senate President Stewart-Cousins’ March 28, 2020 press release/public statement whose opening sentence began: “The Senate Majority will be in Albany tomorrow for conference...” and whose concluding sentence read: “Obviously, this is a fluid situation, and we will let everyone know if there are any changes.”: <https://www.nysenate.gov/newsroom/press-releases/andrea-stewart-cousins/statement-senate-majority-leader-andrea-stewart-10>;
- (4) records as to the “method” and “means” subsequently designated by Temporary Senate President Stewart-Cousins for attendance, participation, and voting, pursuant to Resolution #3108 – and as to any opposition thereto from Senators;
- (5) records as to compliance with the “method” and “means” designated by Temporary Senate President Stewart-Cousins – and any problems/difficulties encountered with respect thereto;

- (6) records of communications between Senate and Assembly Leaders as to the significantly divergent fashion in which resolutions to adopt emergency temporary procedures were being enacted – and the divergence in the “method” and “means” subsequently designated.

As you have ignored – without response – virtually all of CJA’s many FOIL requests, going back to our November 29, 2019 FOIL request pertaining to the Legislature’s proposed budget² – a copy of this FOIL request is being simultaneously furnished, for response, to the 15 Legislative Leaders who, pursuant to the December 10, 2018 report of the Committee on Legislative and Executive Compensation, continue to receive stipends for the “significantly more work” and “additional duties” they are expected to perform – and to Senator Benjamin, who is not among them.

Thank you.

cc: Senior Assistant Majority Leader Brian Benjamin

Stipend-Benefitting Legislative Leaders:

Senate Majority Leader Andrea Stewart-Cousins
Senate Minority Leader John Flanagan, Esq.
Senate Deputy Majority Leader Michael Gianaris, Esq.
Senate Deputy Minority Leader Joseph Griffo
Finance Committee Chair Liz Krueger
Finance Committee Ranking Member James Seward
Assembly Speaker Carl Heastie
Assembly Minority Leader William Barclay, Esq.
Assembly Majority Leader Crystal Peoples-Stokes
Assembly Speaker *Pro Tempore* Jeffrion Aubry
Assembly Minority Leader *Pro Tempore* Andrew Goodell, Esq.
Ways and Means Chair Helene Weinstein, Esq.
Ways and Means Committee Ranking Member Edward Ra, Esq.
Assembly Codes Committee Chair Joseph Lentol, Esq.
Assembly Codes Committee Ranking Member Angelo Morinello, Esq.

² CJA’s FOIL requests during this 2020 legislative session – and prior legislative sessions – are accessible from CJA’s website, www.judgewatch.org, via the prominent center link: “Comparing NY’s Legislature BEFORE & AFTER its Fraudulent Pay Raise”. The direct link to CJA’s 2020 FOIL requests is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2020-21/2020-foil.htm>.