

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, April 13, 2020 10:12 AM
To: jjochnowitz@timesunion.com

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Subject: **Paying Tribute to Richard Brodsky -- Your Viewpoint Column "Thanks for all the arguments, Richard Brodsky" (April 8, 2020)**

Attachments: [3-18-20-ltr-to-gov-revised-fn1.pdf](#); [3-18-20-e-mail-to-albany-biz-journal.pdf](#);
[3-21-20-email-to-legislative-correspondents-association-reporters.pdf](#)

TO: Albany Times Union
Jay Jochnowitz, Editorial Page Editor

Your April 8th tribute "[Thanks for all the arguments, Richard Brodsky](#)" recounts your last e-mail to Mr. Brodsky on Friday, April 3rd – and your phone conversation with him immediately thereafter – about his weekly column for the Times Union that you had not received.

Below is my last e-mail to Mr. Brodsky, on Tuesday, March 31st, entitled "Securing honest diagnosis of the state of the NYS Budget -- & of the Court of Appeals' 2004 decision in Pataki v. Assembly/Silver v. Pataki, 4 NY3d 7" – simultaneously sent to you and other Times Union editors and reporters because it responded to Mr. Brodsky's March 29th Times Union column expressing concern that Governor Cuomo would "jam extraneous matter into the budget using his dictatorial powers under *Silver v. Pataki*".

Mr. Brodsky was a vehement critic of the Court of Appeals' 2004 *Silver v. Pataki* decision – as, for instance, by his May 31, 2015 Times Union column "[In praise of Albany's Big Ugly](#)", his December 6, 2018 column in City Limits "[Fixing NY's Dictatorial Budget Process Is The Reform We Most Need](#)", and his participation in two public programs on that topic: a June 16, 2015 forum sponsored by the Rockefeller Institute of Government and Albany Law School entitled "Budgets and the Balance of Power: The Lasting Impact of *Silver v. Pataki* and How It Shapes the Future of Government in New York State" – https://www.youtube.com/watch?v=K_DqMfekqm8&list=PLhfbU5xy_knRmpTcEGTVwUoe462BLJeUW&index=4&t=0s – and a May 30, 2019 forum sponsored by the Empire Center for Public Policy entitled "[New York's Budget Process: Time for a Rebalance?](https://www.empirecenter.org/publications/new-yorks-budget-process-time-for-a-rebalance/)" --

Why doesn't the Times Union, therefore, pay a meaningful tribute to its long-time columnist, Mr. Brodsky, by investigating and reporting on what he would have found had illness not prevented him from verifying the accuracy of my March 31st e-mail response to what turned out to be his last Times Union column, *to wit*, his March 29th column, not his March 22nd column, as the Times Union's April 8th obituary "[Former Assemblyman Richard Brodsky dies at 73](#)", by Cayla Harris makes appear.

What was your view of my March 31st e-mail about Mr. Brodsky's March 29th column, with its above-attached March 18th letter to Governor Cuomo particularizing the unconstitutionality of his policy-packed budget, based on analysis of the 2004 *Silver v. Pataki* decision? Surely you read it, promptly – and not only because you were editor of Mr. Brodsky's columns, but because it was clearly germane to

the budget then being enacted – and your March 16th editorial “[Don't rush state budget](#)” about Governor Cuomo having “stuffed the budget with lots of controversial policy issues as a way to get them passed with as little fuss as possible”. And was there no discussion about it between you and Executive Editor Casey Seiler – and Executive Editor *Emeritus* Rex Smith – each writing blogs – and none with or between the three Times Union reporters to whom I had also sent my March 31st e-mail, Ms. Harris, Chris Bragg, and Amanda Fries, who nonetheless continued to write about the policy-packed budget as if there was nothing unconstitutional about it, as for instance, by their April 3rd article “[Paid sick leave, flavored e-cig ban, bail changes in state budget](#)”? And did none of these three reporters – or Brendan Lyons, the Times Union's editor of its state bureau and investigations team -- make mention of the fact that 10 days earlier I had sent the March 18th letter to each of them, as members of the Albany Legislative Correspondents Association, *via* the above-attached March 21st e-mail entitled “Gov & Legislative Leaders get GOOD NEWS during this Coronavirus Emergency: Simplifying the policy-packed NYS budget is EASY, as 6 of the Gov's 7 ‘Article VII Bills’ are UNCONSTITUTIONAL”

Mr. Brodsky had a Harvard law degree – over and beyond his 27 years as a state legislator. What do you and your Times Union colleagues believe Mr. Brodsky's findings of fact and conclusions of law would have been with respect to my March 18th letter to the Governor? Why not ask the Empire Center's E.J. McMahon and the so-called “good-government” groups to whom I also sent my March 31st e-mail – NYPIRG, Reinvent Albany, Common Cause, Citizens Union, League of Women Voters? Surely, they would give you the benefit of their findings of fact and conclusions of law with respect to the March 18th letter, if you asked them. And shouldn't you expect that Governor Cuomo would furnish you with findings of fact and conclusions of law – and, likewise, such other recipients of the March 18th letter as the 15 stipend-benefitting legislative leaders, virtually all of whom are running for re-election in November, Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie, among them.

Indeed, inasmuch as the non-fiscal legislation that Governor Cuomo inserted into the FY2020-21 budget – as part of his global, behind-closed-doors “three-men-in-a-room” budget deal-making with Temporary Senate President Stewart Cousins and Assembly Speaker Heastie – included the “force of law” recommendations of the Public Campaign Financing and Election Commission that Mr. Brodsky had successfully challenged, on behalf of the Working Families Party, Mr. Brodsky would have reasonably recognized that the March 18th letter was essential for a WIN in the upcoming lawsuit he would be bringing for the Working Families Party – if not, additionally, for other third parties – to strike down the increased requirements for their securing ballot lines, enacted in the budget.

By the way, who are the scholars of the New York State Constitution and the Court of Appeals on whom the Times Union relies to validate the accuracy of its editorializing and fact reporting? Did the Times Union consider Mr. Brodsky to be one? Shouldn't you ask such scholars for their opinions of the March 18th letter – and whether, as is obvious, it would bring victory to lawsuits challenging statutory enactment of the Public Campaign Financing and Election Commission recommendations, *via* the FY2020-21 budget.

I look forward to your response – and would welcome a telephone call to discuss the *prima facie*, evidentiary proof as to the unconstitutionality, unlawfulness, and fraud by which New York's FY2020-21 budget was enacted, posted on CJA's website for the 2020 legislative session: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/2020-session-menu.htm> – including under the heading “IT'S NOT OVER...” Likewise, to discuss the budget's brazen larceny of taxpayer monies.

Thank you.

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Subject: Securing honest diagnosis of the state of the NYS Budget -- & of the Court of Appeals' 2004 decision in Pataki v. Assembly/Silver v. Pataki, 4 NY3d 75

TO: **Former New York State Assemblyman Richard Brodsky, Esq.**
E.J. McMahon/Empire Center for Public Policy
Blair Horner/New York Public Interest Group
Reinvent Albany
Common Cause/New York State
Citizens Union
League of Women Voters of the State of New York

Below, with the above substantiating attachments, is my self-explanatory e-mail of today's date to journalist/lawyer Ross Barkan, entitled "Your article '*Cuomo Helped Get New York Into This Mess*' (*The Nation*, 3/30/20) is MISSING the Role of the Legislature & the NY Court of Appeals, among others -- & MISREPRESENTS the State Budget". Reinforcing its importance is Mr. Brodsky's opinion piece, published two days ago in the *Albany Times Union*, entitled "*Cuomo deserves praise -- and some words of caution*", asking – with respect to the Governor -- "Will he try to jam extraneous matter into the budget using his dictatorial powers under *Silver v. Pataki*?"

Do you deny or dispute the accuracy of my attached March 18, 2020 letter to Governor Cuomo? And who are the scholars of the New York State Constitution and of the New York State Court of Appeals, on whom Mr. Barkan and other journalists can rely for honest diagnosis of the state of the state budget -- & of the Court of Appeals' 2004 decision in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75? Do you agree that my March 18, 2020 letter to the Governor is "the FIRST scholarship deconstructing its plurality, concurring, and dissenting opinions", prefigured by my March 26, 2019 letter to the Court of Appeals, in support of an appeal of right, which had stated (at pp. 21-22) and reinforced by footnotes (#11, 12):

"What is before the Court, on this appeal of right, is catastrophic. Gone is the constitutional design of separation of executive and legislative powers – replaced by collusion of powers that has undone our State Constitution. And more than the budget is at issue. It is the very governance of this State, as the budget has become a pass-through for policy having nothing to do with the budget – the 'proposed legislation, if any' of Article VII, §3 having become separated from its meaning in Article VII, §2: 'proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures [of the budget]',^{fn11} further foisted by constitutionally unauthorized "non-appropriation" Article VII budget bills.^{fn12} (underlining in the original).

CJA's webpage for the March 18, 2020 letter, on which its referred-to evidentiary substantiation is posted and/or accessible, is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm>. CJA's webpage for my prior outreach to you for scholarship pertaining to the state budget, the "force of law" commission-based judicial pay raises it embeds, and for *amicus curiae* and other assistance, spanning back to 2013 – and continuing with the March 26, 2019 letter -- is accessible from CJA's menu page for our two citizen-taxpayer actions, *CJA v. Cuomo, et al*, here: <http://www.judgewatch.org/web-pages/searching-nys/budget/menu-budget-reform.htm>.

In view of the flagrant unconstitutionality what is now unfolding with respect to the state budget, your reply is required, STAT.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>

Sent: Tuesday, March 31, 2020 8:10 AM

To: 'ross.barkan@gmail.com' <ross.barkan@gmail.com>

Subject: Your article 'Cuomo Helped Get New York Into This Mess' (The Nation, 3/30/20) is MISSING the Role of the Legislature & the NY Court of Appeals, among others -- & MISREPRESENTS the State Budget

TO: Ross Barkan, Esq.

I read with interest your yesterday's article in The Nation, "[Cuomo Helped New York Get Into This Mess](#)", referencing the 2006 commission headed by Stephen Berger that recommended hospital closures and downsizing – and furnishing a link to a [November 29, 2006 New York Times article](#) whose pertinent paragraph reads:

“Unless they are rejected by Gov. George E. Pataki or by the Legislature next month, the commission’s recommendations will have the force of law, and most must be carried out by the end of next year. The law does not allow the governor or the Legislature to accept some recommendations and not others; they must accept or reject the plan as a whole. State officials said they would study the plan, and leaders in the Senate and the Assembly said they would hold hearings on the proposals before deciding what to do.” (underlining added).

Your article, which quotes the Senate Health Committee’s current chair, Senator Gustavo Rivera, does not identify what oversight that committee (<https://www.nysenate.gov/committees/health>) discharged over the Berger Commission’s “force of law” recommendations or over other major health care policy decisions in the 13 years since – nor the oversight discharged by the Assembly’s Health Committee, currently chaired by Assemblyman Richard Gottfried: <https://nyassembly.gov/comm/?id=19>. Don’t you think the many members of those two legislative health committees bear ANY culpability for getting New York “into this mess”? How about the statutory Legislative Commission/Council on Health Care Financing, <https://nyassembly.gov/comm/?id=45>, which has NO members?

And what about the other legislative committees that have more general oversight responsibilities? -- the statutory Legislative Commission on Government Administration, which is supposed to have 10 members, but only has one, its chair, Assemblyman David Buchwald, Esq.: <https://nyassembly.gov/comm/?id=49>, the Assembly Committee on Governmental Operations, currently chaired by Assemblyman Kenneth Zebrowsky, Esq.: <https://nyassembly.gov/comm/?id=18>, the Assembly Committee on Oversight, Analysis and Investigation, currently chaired by Assemblyman John McDonald: <https://nyassembly.gov/comm/?id=30>, and the Senate Committee on Investigations and Government Operations, currently chaired by Senator James Skoufis (<https://www.nysenate.gov/committees/investigations-and-government-operations>).

And what about ALL Senate and Assembly Members who – notwithstanding the 2004, 2006, and 2008 Brennan Center reports attributing the Legislature’s “dysfunction” to Senate and Assembly rules: <http://www.judgewatch.org/web-pages/judicial-compensation/rules-reform-resource-page.htm> – have collusively perpetuated them, disabling the Legislature from functioning at ANY constitutional level, including with respect to the state budget.

As you know, the verified pleadings in CJA’s two citizen-taxpayer actions – *CJA v. Cuomo, et al* – suing all three government branches for their collusion against the People involving the entirety of the state budget and the “force of law” commission-based judicial pay raises it embeds: <http://www.judgewatch.org/web-pages/searching-nys/budget/menu-budget-reform.htm>, chronicles the unconstitutionality and unlawfulness of what has been going on. Particularly relevant to your

mention of the 2006 Berger Commission is my March 26, 2019 letter to the Court of Appeals in support of an appeal of right in the second citizen-taxpayer action. Its pages 9-15 (including fn. 4) pertain to the two lawsuits that went up to the Court of Appeals in 2007, contesting the constitutionality of the Berger Commission and its “force of law” recommendations. Here’s the link to CJA’s webpage for the letter so that you can read the amazing story of the Court’s flagrant betrayal of its constitutional duties – motivated by its desire for judicial pay raises utilizing a comparable “force of law” commission scheme: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/3-26-19-ltr.htm>.

More immediately relevant to your article, however – and, specifically, to your assertion:

“These days, the best hope for the health care providers and advocates who want to save hospitals from further gutting is for Cuomo to simply change his mind. As governor, he holds [inordinate power](#) over the state budget, where he wants his cuts enshrined. Lawmakers may have to choose between rejecting his cuts or shooting down the state budget altogether in a time of singular catastrophe” (underlining/link in your article),

is my above-attached March 18, 2020 letter to Governor Cuomo – sent simultaneously to him and to Senate and Assembly Legislative Leaders. Clear from its quotation of Article VII, §4 of the New York State Constitution – and so-stated by my letter (at p. 2) -- is that “New York has a rolling budget”, with the Governor’s appropriation bills, other than for the Legislature and Judiciary, becoming law “immediately”, once the Senate and Assembly reconcile their separate amendments of each, limited to strike-outs and reductions of items. In other words, constitutionally, there is NO such thing as “Lawmakers..shooting down the state budget altogether”. Indeed, the link your article furnishes pertaining to the Governor’s so-called “inordinate power”, *to wit*, your own April 26, 2019 article in the Gothamist: “*Enough is enough: Lawmakers seek to break Cuomo’s grip on NY’s budget*”, conceals the unconstitutionality of the Legislature’s one-house budget resolutions and the global, deal-making between the Governor, Temporary Senate President, and Assembly Speaker – “the three men in a room” – over the state budget, likewise concealing the significance of the Court of Appeals’ 2004 decision in *Pataki v. Assembly/Silver v. Pataki* case, as to which you furnish NO analysis, including because of your reliance on former legislator Assemblyman Richard Brodsky, Blair Horner of NYPIRG, Alex Camarda of Reinvent Albany, and E.J. McMahon of the Empire Center.

Why don’t you ask these sources – whose misrepresentations and guile about the state budget process and *Silver v. Pataki* have infected countless articles and editorials – what, if anything, they deny or dispute about my March 18, 2020 letter. I have already furnished the letter to all except Brodsky – and below is my March 23, 2020 e-mail to NYPIRG, Reinvent Albany, and, additionally, Common Cause, League of Women Voters, and Citizens Union, wherein I further requested their “forwarding the letter to scholars of the New York State Constitution and of the New York State Court of Appeals for their evaluation, as well.” For completeness, attached is the March 18, 2020 e-mail I sent to McMahon. So that all these “experts” can be prepared for your inquiries – including as to the scholars they have enlisted to verify the facts – I will forward this e-mail to them – and cc you on the transmittal.

I am available to assist you, to the max, on this major story – and would welcome your call, especially as you are not only a journalist, but a lawyer.

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Subject: NYS Budget: GOOD NEWS During the Coronavirus Emergency About Eliminating its Policy, Non-Budgetary Content

TO: Common Cause/New York State
League of Women Voters/New York State
New York Public Interest Research Group (NYPIRG)
Citizens Union
Reinvent Albany

A propos of your March 16, 2020 press release “[Good Gov't Groups to NYS Lawmakers: ‘Keep Policy Out of the Budget’](#)” – reported by the Legislative Gazette on March 18, 2020 in a story entitled “[Watchdog groups, Republican lawmakers make plea for a transparent and policy-free budget this year](#)” – this is to reiterate what I have previously alerted you to: that the inclusion of policy and non-budgetary items in the state budget is UNCONSTITUTIONAL.

The details are set forth in the Center for Judicial Accountability’s above-attached March 18, 2020 letter to Governor Cuomo, sent to him and Legislative Leaders by the below e-mails. Entitled "GOOD NEWS DURING THE CORONAVIRUS EMERGENCY: You Can Chuck 6 of the 7 'Article VII Bills' Because They are Unconstitutional. Here's why...", it analyzes the Governor’s “Article VII Bills” for FY2020-21 and does so in the context of the Court of Appeals’ seminal 2004 decision in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75, providing what appears to be the FIRST scholarship deconstructing its plurality, concurring, and dissenting opinions.

CJA's webpage for the March 18, 2020 letter – from which its referred-to substantiating evidentiary proof is accessible – is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm> .

Please advise as to whether you agree or disagree with the analysis in CJA's March 18, 2020 letter – and confirm that you will be forwarding the letter to scholars of the New York State Constitution and of the New York State Court of Appeals for their evaluation, as well.

Thank you.

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Subject: Executive Budget ... CJA's March 18, 2020 letter to Gov. Cuomo: "GOOD NEWS DURING THE

CORONAVIRUS EMERGENCY: You Can Chuck 6 of the 7 'Article VII Bills' Because They are Unconstitutional. Here's why..."

MORE GOOD NEWS DURING THE CORONAVIRUS EMERGENCY –

CJA's March 18, 2020 letter to Governor Cuomo "...GOOD NEWS DURING THE CORONAVIRUS EMERGENCY", sent to you by the below March 18, 2020 e-mail, is now posted on CJA's website – on a webpage now reflecting the March 18, 2020 date. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm>. According to the U.S. priority mail delivery receipt (there posted), the letter was delivered to the Governor's office this morning.

The letter, with a revised footnote 1 updating the link for the webpage, is attached. Additionally attached is the letter's single enclosure – CJA's August 21, 2013 letter to the Governor on "Achieving...a Properly Functioning Legislature..."

Thank you.

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Subject: ...Executive Budget...GOOD NEWS DURING THE CORONAVIRUS EMERGENCY: You Can Chuck 6 of the 7 "Article VII BILLS" Because They are Unconstitutional. Here's why....

TO: Governor Andrew Cuomo, Esq.
Budget Director Robert Mujica, Esq.
Legislative Bill Drafting Commission
15 Stipend-Benefitting Legislative Leaders

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

Attached is my above-entitled letter of today's date to Governor Cuomo, the original of which will be mailed to him. All others are indicated recipients, for the reasons stated in the last paragraph (at p. 13).

Due to a catastrophic computer breakdown, on this end, I am presently unable to post the letter on CJA's website, www.judgewatch.org and to update the site. The webpage for the letter – which had been prepared two days ago, before the breakdown – is here – reflecting the letter's then March 16, 2020 date: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-16-20-ltr-to-gov.htm>. From the webpage you can access the letter's referred to documentary proof – and its sole enclosure: my August 21, 2013 letter to the Governor, entitled "Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act (Program Bill #3) – the *Sine Qua Non* for 'Government Working' & 'Working for the People'", to which I received no response.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200