

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Wednesday, August 19, 2020 10:46 AM  
**To:** bmax@gothamgazette.com; skhurshid@gothamgazette.com;  
ethangs@gothamgazette.com; editor@citylimits.org; jarrett@citylimits.org

**Subject:** **Backstory to the SUNY Board of Trustees' closed-door meetings, since Monday, to appoint James Malatras as SUNY's new chancellor**

**Attachments:** [8-14-20-confirmation-of-receipt.pdf](#);  
[8-2-18-note-to-schultz-rockefeller-institute.pdf](#)

**TO: Gotham Gazette, City Limits, Max & Murphy**

See below for the details of the latest scandal in New York governance. As always, I am available to interviewed, on the record, under oath – and to answer questions.

Thank you.

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

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Wednesday, August 19, 2020 9:01 AM  
**To:** 'gwen.kay@oswego.edu' <[gwen.kay@oswego.edu](mailto:gwen.kay@oswego.edu)>; 'Christy.fogal@suny.edu' <[Christy.fogal@suny.edu](mailto:Christy.fogal@suny.edu)>; 'jahad.hoyte@sunysa.org' <[jahad.hoyte@sunysa.org](mailto:jahad.hoyte@sunysa.org)>; 'espiro@maglaw.com' <[espiro@maglaw.com](mailto:espiro@maglaw.com)>; 'ecorngold@fklaw.com' <[ecorngold@fklaw.com](mailto:ecorngold@fklaw.com)>

**Subject: #2 -- Were SUNY Board of Trustees' members furnished with my Aug 14th e-mail as to Mr. Malatras' unfitness to be chancellor -- & the unlawfulness of the "confidential search"?**

**TO: SUNY Board of Trustees**  
**Gwen Kay/President – Faculty Senate**  
**Christy Fogal/President – Faculty Council of Community Colleges**  
**Jahad Hoyte/President – Student Assembly**

My e-mails to Board of Trustees Members Edward Spiro, Esq. and Eric Corngold, Esq. each bounced back as “rejected due to security policies”. Please, therefore, forward my e-mail to them, as well.

Additionally, I take this opportunity to annex the single attachment to my August 14<sup>th</sup> e-mail which inadvertently dropped out when I re-sent the e-mail on August 17<sup>th</sup>. It is my August 2, 2018 handwritten transmittal letter – also posted on CJA’s substantiating evidentiary webpage for the August 14<sup>th</sup> e-mail

with the appeal papers it transmitted. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/malatras-suny.htm>.

Thank you.

Elena Sassower  
914-421-1200

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Wednesday, August 19, 2020 7:58 AM  
**To:** 'gwen.kay@oswego.edu' <[gwen.kay@oswego.edu](mailto:gwen.kay@oswego.edu)>; 'Christy.fogal@suny.edu' <[Christy.fogal@suny.edu](mailto:Christy.fogal@suny.edu)>; 'jahad.hoyte@sunysa.org' <[jahad.hoyte@sunysa.org](mailto:jahad.hoyte@sunysa.org)>; 'espiro@maglaw.com' <[espiro@maglaw.com](mailto:espiro@maglaw.com)>; 'ecorngold@fklaw.com' <[ecorngold@fklaw.com](mailto:ecorngold@fklaw.com)>

**Subject: Were SUNY Board of Trustees' members furnished with my Aug 14th e-mail as to Mr. Malatras' unfitness to be chancellor -- & the unlawfulness of the "confidential search"?**

**TO: SUNY Board of Trustees**  
**Gwen Kay/President – Faculty Senate**  
**Christy Fogal/President – Faculty Council of Community Colleges**  
**Jahad Hoyte/President – Student Assembly**  
**Edward Spiro, Esq.**  
**Eric Corngold, Esq.**

Based on yesterday's Albany Times Union article "[SUNY poised to name Cuomo loyalist Malatras as chancellor](#)" and Monday's New York Post article, "[SUNY Board set to appoint Cuomo right-hand Jim Malatras next chancellor: source](#)", it appears that members of the Board of Trustees are unaware of my below two e-mails, sent to Board staff late Friday afternoon, August 14<sup>th</sup>, and early Monday morning, August 17<sup>th</sup>, **particularizing, with proof**, that the Board's purported "confidential search" for a chancellor involving Mr. Malatras is unlawful, violating Public Officers Law §74, and that he is a corrupt public officer who must be categorically rejected.

Am I correct in surmising that Board staff did not distribute either e-mail to you – and that you were, instead, pushed into meetings to approve Mr. Malatras' appointment? Indeed, prior to sending the August 14<sup>th</sup> e-mail, I spoke with Board Coordinator Pamela Morrison (cell: 518-888-4650), who promised to both confirm the e-mail's receipt AND, following preliminary review by staff, its distribution to the Board. The only confirmation I received was as to the e-mail's receipt – and it is above attached.

As you are the only Board members whose e-mail addresses I was able to find on the internet, I ask that you immediately forward this e-mail to the Board's other members – and place it on the agenda of today's meeting at which Mr. Malatras' appointment as chancellor is expected to be approved.

I am available to assist you – and will, meantime, forward this e-mail to the press and other appropriate parties for investigation and report as to who, at SUNY, reviewed the August 14<sup>th</sup> and August 17<sup>th</sup> e-mails, upon receipt, whether they were thereafter distributed to the Board, and whether the scheduling of the Monday night Board meeting was prompted by the August 14<sup>th</sup> e-mail.

Thank you.

Elena Sassower  
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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Monday, August 17, 2020 8:14 AM  
**To:** 'Trustees' <[Trustees@suny.edu](mailto:Trustees@suny.edu)>; 'Morrison, Pamela' <[Pamela.Morrison@suny.edu](mailto:Pamela.Morrison@suny.edu)>

**Subject: (1) FOIL: SUNY's "confidential search" for a new chancellor; (2) NOTICE: "leading candidate" James Malatras is corrupt; (3) QUESTIONS: SUNY scholarship & teaching of the NYS Constitution, as written & applied; (4) SCHOLARSHIP: primary-source evidence**

**TO: SUNY BOARD OF TRUSTEES**

I have corrected typographical errors and made mostly non-substantive clarifying changes to my below August 14, 2020 e-mail. Apologies for any inconvenience.

Thank you.

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

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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Friday, August 14, 2020 4:48 PM  
**To:** 'trustees@suny.edu' <[trustees@suny.edu](mailto:trustees@suny.edu)>; 'pamela.morrison@suny.edu' <[pamela.morrison@suny.edu](mailto:pamela.morrison@suny.edu)>

**Subject: (1) FOIL: SUNY's "confidential search" for a new chancellor; (2) NOTICE: "leading candidate" James Malatras is corrupt; (3) QUESTIONS: SUNY scholarship & teaching of the NYS Constitution, as written & applied; (4) SCHOLARSHIP: primary-source evidence**

**TO: SUNY BOARD OF TRUSTEES**

**RE: (1) FOIL: SUNY's "confidential search" for a new chancellor;  
(2) NOTICE: "leading candidate" James Malatras is corrupt;  
(3) QUESTIONS: SUNY scholarship & teaching of the NYS Constitution, as written & applied;  
(4) SCHOLARSHIP: primary-source evidence**

According to an [August 10, 2020 article in the New York Post](#), a member of the SUNY Board of Trustees who “requested anonymity” stated that James Malatras”, a “top advisor to Gov. Andrew Cuomo”, is “the leading candidate” to become SUNY chancellor in “the confidential search to replace former Chancellor Kristina Johnson”.

Apparently, the so-called “confidential search” is so confidential that [SUNY’s website](#) posts no information about it. The most I was able to find were two news releases from the Board of Trustees: a [June 2, 2020 news release](#) announcing Chancellor Johnson’s departure pending appointment by the Board of Trustees of “an interim leadership structure”, followed by a [June 29, 2020 news release](#) that the Board of Trustees had appointed “SUNY’s Interim Leadership Team...led by Robert Megna, Senior Vice Chancellor and Chief Operating Officer, and Tod Laursen, Senior Vice Chancellor and Provost”. Elsewhere on the SUNY website, I found a webpage entitled “[Building on SUNY’s Legacy](#)” as to “The Search for SUNY’s Future Leaders”, stating:

“One of the challenges of being the largest university system in the nation is that our wonderful presidents move on. However, by promoting and recruiting new leaders throughout the system, we have a unique opportunity to build on our work. The selection of our campus presidents is central to SUNY’s growing excellence. With several presidential searches beginning, leadership is conducting rigorous national and international outreach to attract highly qualified and diverse pools. Through this website, we will continue to update and provide information regarding our search activities. In addition, we hope the SUNY community, the people of the State of New York, prospective candidates, and any other stakeholders will use this [webform](#) to submit nominations for consideration.”

A [linked webpage of “Current Presidential Openings”](#) furnishes the specifics of “Active Presidential Searches” – currently showing 4. A [linked webpage for “Executive Openings”](#) brings up a single opening – for “Vice Chancellor of Academic Health and Hospital Affairs”. This is also the only available position that comes up on a different webpage entitled “[SUNY Executive Search](#)”, which states it is “dedicated to current executive management position searches at SUNY System Administration”. In other words, SUNY’s website is devoid of any information about the vacancy in the office of chancellor – and about applying to fill it.

By contrast, in 2016, following announcement that then Chancellor Nancy Zimpher would be stepping down, the Board of Trustees put out a [July 12, 2016 news release](#) identifying a search committee for a new chancellor, which had already begun its work – and whose 22 named members were “intended to reflect the many constituencies that SUNY serves” – and which was going to be aided by “a professional executive search firm that will identify, recruit, and encourage potential candidates, review the qualifications of applicants, and verify the credentials of all finalists.” The release furnished a link for the RFP being used to select the executive search firm— stating that the decision on the firm was expected “this month”, that “Information about the search, as well as the ability to provide feedback to the search committee, is available online”, and that “The committee will conclude its work by recommending to the SUNY Board of Trustees a short list of finalists. The Board will consider the finalists and then vote in public session to name the next SUNY chancellor.” Thereafter, an [August 15, 2016 news release](#) announced that the firm of Isaacson, Miller had been selected “Following a competitive

RFP process” and that “More information about the SUNY chancellor search is available online. Suggestions of potential candidates can be submitted directly to Isaacson, Miller at [www.imsearch.com/5920](http://www.imsearch.com/5920).”

In 2017, SUNY’s Board of Trustees announced a selection process for provost – the same as led to Mr. Laursen’s selection. An [October 5, 2017 news release](#) stated that a search committee – 14 named members “composed of representatives from all facets of SUNY including trustees, presidents, faculty, staff, and students” – would “begin their work immediately” to “review applications, screen candidates, and recommend a pool of final candidates to the chairman, chancellor, and SUNY Board of Trustees for the Board’s final approval.” The release announced that “Additional information about the SUNY provost search is available online. All applications, confidential inquiries, and nominations for the search can be sent to: [provostsearch@suny.edu](mailto:provostsearch@suny.edu)”. The referred-to “online” information were webpages for the provost search – the primary page stating “Through this website, we will continue to update and provide information regarding our search activities. In addition, on behalf of the Committee, we hope the SUNY community, the people of the State of New York, prospective candidates, and any other stakeholders will use this webform to provide input and raise any questions or concerns.”

Suffice to also note that the same [June 29, 2020 news release](#) as announced “SUNY’s Interim Leadership Team” of Messrs. Megna and Laursen went on to state that the Erie Community College Board of Trustees had announced an immediate search for a new president and that “A website has been established for the search”. The linked website, [www.ecc.edu/Presidential-Search](http://www.ecc.edu/Presidential-Search)”, stated – under the heading “Process” – that a national search firm would be employed and a presidential search committee empaneled “comprised of board members, students, and representatives from the College, as well as individuals from the private sector including business representatives and community volunteers, and elected officials”. It then concluded – under the heading “Contact Us” – “Please email questions, comments on characteristics for the next president or letters of interest in serving on the Presidential Search Committee to [presidentalsearch@ecc.edu](mailto:presidentalsearch@ecc.edu).”

Based on the foregoing, I do not believe that the SUNY Board of Trustees can lawfully appoint SUNY’s next chancellor – be it Mr. Malatras or anyone else – *via* a supposed “confidential search”, whose purpose is plainly to prevent a pool of qualified candidates from being alerted to the vacancy and applying to fill it. Presumably, written guidelines and procedures exist regulating how the Board of Trustees appoints the SUNY chancellor – including whether a specific salary is offered to the candidates – or whether the candidates compete as to the salary they would accept. Pursuant to **FOIL (Public Officers Law Article VI)**, I request such written guidelines and procedures – including records that would establish whether the \$560,000 annual salary paid to former Chancellor Johnson and such other generous non-salary compensation benefits as “a house in Albany blocks away from the state Capitol”, reported by a [June 2, 2020 article in Politico](#), are being offered in the “confidential search”.

Indeed, inasmuch as Mr. Malatras is a close aide, advisor, and protégé of Governor Cuomo – and 14 of the Board of Trustees’ current 17 members are Governor Cuomo appointees – the Board of Trustees’ “confidential search” where Mr. Malatras has the “inside track” plainly runs afoul of Public Officers Law §74 proscribing not only conflicts of interest, but conduct that gives the impression or raises suspicion of conflicts of interest. Helpfully, [SUNY’s webpage for the Board of Trustees](#) posts much information on the subject: (1) [Public Officers Law §74](#) (2) a [handbook of general information about the Board of Trustees](#) – with a section entitled “Ethics” (at pp. 8-9) highlighting Public Officers Law §74; (3) a [Code of Conduct for State University Officers](#), also incorporating and annexing Public Officers Law §74; (4)

a [Statement on the Governance Role of a Trustee or Board Member](#), which – under the heading “Duty of Loyalty/Conflicts of Interest” – pertinently instructs (at p. 4):

“Trustee/board members owe allegiance to the institution and must act in good faith with the best interest of the institution in mind. The conduct of a trustee/board member must, at all times, further the institution’s goals and not the member’s personal or business interests. Consequently, trustees/board members should not have any personal or business interest that may conflict with their responsibilities to the institution. A trustee/board member should avoid even the appearance of impropriety when conducting the institution’s business. Acts of self-dealing constitute a breach of fiduciary responsibility that could result in personal liability and removal from the board.”

and (5) a [statement of “Board Responsibility for Institutional Governance” of the Association of Governing Boards of Universities and Colleges](#) stating (at #5) “...so should individual board members avoid even the perception of any personal agendas or special interests. Board members and governing boards should not be seen as advocates for their appointing authorities...”

In any event, I hereby give **NOTICE** that if – as appears based on an [Albany Times Union June 3, 2020 article](#), [June 7, 2020 editorial](#), [June 29, 2020 opinion letter](#), [July 18, 2020 article](#), and [July 22, 2020 editorial](#) – the SUNY Board of Trustees has dispensed with any cognizable search process because it is being influenced to believe that Mr. Malatras is the best candidate for the job – an appearance further bolstered by the [New York Post’s August 10, 2020 article](#) with its extensive quoting of an anonymous Board of Trustees member about how Mr. Malatras is “the right choice right now. His skill sets are what’s needed right now” – an article curiously replicated as a [“KYR News” article](#) and, astonishingly, as a [you-tube posted VIDEO](#) -- such belief is misplaced. Mr. Malatras is a corrupt public officer who used his multiple positions of responsibility and public trust to aid, abet, and perpetuate systemic government corruption involving an unconstitutional and larcenous New York state budget – and its embedded “force of law” commission/committee-based pay raises for judicial, legislative, and executive constitutional officers that have stolen, since 2012, approximately half a billion dollars from New York taxpayers. As I have *prima-facie*, open-and-shut EVIDENCE to prove this – EVIDENCE involving Mr. Megna, as well – please advise as to when I might appear before the Board of Trustees to give testimony, under oath – and answer questions. Meantime, the VIDEO of my self-sworn testimony before both Mr. Malatras and Mr. Megna at the November 4, 2019 hearing of the Commission on Legislative, Judicial and Executive Compensation – of which they were and are members, appointed by Governor Cuomo – as well as my subsequent further substantiating submissions, correspondence, and FOIL requests to the Commission – all ignored and concealed by its statutorily-violative and fraudulent December 26, 2019 report – is posted on the website of the Center for Judicial Accountability, Inc. (CJA), the non-partisan, non-profit citizens’ organization of which I am director and co-founder. The website is [www.judgewatch.org](#) – and the direct link to the webpage for this FOIL/NOTICE, from which you can conveniently access the EVIDENCE, including as to the disqualifying conflicts of interests of six of the seven commissioners, Messrs. Malatras and Megna among them, is here: [http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-e-chapter60-laws-2015/malatras-suny.htm](#).



Additionally, and bearing upon Mr. Malatras' disqualifying conflicts of interest, I take this opportunity to bring to your attention that a key reason for the public corruption infesting our state government and elections is that [New York's taxpayer-supported SUNY system, spanning 64 institutions and serving nearly 1.3 million students](#), apparently has NO scholarship and teaching about the New York State Constitution, *as written and as applied*, let alone any degree program to recognize proficiency in an area so critical to our governance. Highlighting this – as relates to Article VII of the New York State Constitution pertaining to the state budget – is my below July 20, 2017 e-mail entitled “STILL in search of scholarship: ‘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’ – June 16, 2015 forum” – which I sent to Mr. Malatras, who had become president of SUNY's [Rockefeller Institute for Government](#) in February 2017. It forwarded to him and other high-ranking Rockefeller Institute staff an April 18, 2017 e-mail, identically-titled but for the first word “STILL”, that I had sent to the Rockefeller Institute's then deputy director of operations, without response from him. Likewise, I received no response from Mr. Malatras or from any other Rockefeller Institute recipient to this second e-mail. Is SUNY's Board of Trustees – whose members include a good many lawyers – able to answer the two **QUESTIONS** posed by those e-mails as to where I might find:

- (1) scholarship on the Court of Appeals' 2004 consolidated decision in *Silver v. Pataki/Pataki v. Assembly and Senate* (4 NY3d 75) – and the constitutional provisions relating to the New York State budget;
- (2) scholars to whom I might furnish the “on-the-ground”, empirical evidence that the New York State budget is so flagrantly “OFF the constitutional rails” and violative of the Court of Appeals' 2004 *Silver v. Pataki/Pataki v. Assembly and Senate* decision and Article VII, §§4, 5, 6 and Article III, §10 of the New York State Constitution as to mandate SUMMARY JUDGMENT declarations – relief sought by *CJA v. Cuomo...DiFiore*, the monumental citizen-taxpayer action brought by CJA on behalf of the People of the State of New York and the public interest against the constitutional officers of New York's three government branches.

At the time of the April 18, 2017 and July 20, 2017 e-mails, *CJA v. Cuomo...DiFiore* was unfolding in Supreme Court/Albany County. A year later, the case was before the Appellate Division, Third Department – and Mr. Malatras was still president of the Rockefeller Institute. On August 2, 2018, I hand-delivered [a copy of the appeal brief and three-volume record on appeal](#) to the Rockefeller Institute – this being the “on-the-ground”, empirical evidence” referred to by the April 18, 2017 e-mail. Above-attached is my August 2, 2018 handwritten transmittal letter, begging for “scholarship as to what has been going on – including the corrupting of the judicial process by the Attorney General and the courts” and asking “Can you help in developing such scholarship? Can you share this primary source material with your fellow scholars -- & who might they be?” It was addressed to Dr. Laura Schultz, then senior fellow for fiscal analysis at the Rockefeller Institute – from whom, despite my numerous follow-up phone calls, I received no response – and no return of the transmitted appeal papers. Presumably, this was with the knowledge and approval of her boss, Mr. Malatras. Indeed, she was seemingly rewarded

for her misconduct, as she was elevated to the Rockefeller Institute's top spot – that of executive director for research. Indeed, the position of Rockefeller Institute president, [newly-created for Mr. Maltras in February 2017 at a salary of \\$290,000 a year](#), was never filled after he left it in July 2019, though continued presence, to date, as chair of the Rockefeller Institute's [Board of Advisors](#), on which, parenthetically, Mr. Megna and Mr. Laursen both sit.

By November 4, 2019, when I testified before Mr. Malatras and Mr. Megna at the Commission on Legislative, Judicial and Executive Compensation's hearing, *CJA v. Cuomo... DiFiore* was at the Court of Appeals – and I emphasized this fact and the significance of the record of the case, describing it as “Exhibit A” – establishing, *prima facie* and conclusively, the corruption of New York's judiciary – covering up the corruption of New York's legislative and executive branches, involving the state budget and the “force of law” commission/committee-based pay raises it embeds – a collusion of all three branches, against the People, in the destruction of our state Constitution and its safeguards in furtherance of “a scheme, a corrupt and unconstitutional scheme to give pay raises to corrupt public officers who should be removed for their corruption in office” (November 4, 2019 VIDEO & transcript, at pp. 65-66).

For your purposes, *CJA v. Cuomo...DiFiore* is also “Exhibit A” – as it establishes, also *prima facie* and conclusively, Mr. Malatras' unfitness for the SUNY chancellorship. Upon your verifying this so as to reject Mr. Malatras' candidacy, categorically, your duty is to do what Mr. Malatras was duty-bound to have done as president of the Rockefeller Institute: forward the extraordinary primary-source evidence that is [the record of the CJA v. Cuomo...DiFiore citizen-taxpayer action](#) for **SCHOLARSHIP** by the Rockefeller Institute – and by other SUNY institutes, centers, departments, colleges, and schools as purport to be engaged in research and teaching of state and local governance, public administration, political science, law, and professional responsibility and ethics.

As to what the record of *CJA v. Cuomo...DiFiore* looked like on the November 4, 2019 date of my self-sworn testimony before Mr. Malatras, it is particularized by the final motion I made to the Court of Appeals, three weeks later – and which I furnished to the Commission on Legislative, Judicial and Executive Compensation on November 26, 2019 in substantiation of my testimony. A direct link to the November 25, 2019 motion is posted on CJA's above-indicated webpage for this FOIL/notice – most easily accessed from CJA's website, [www.judgewatch.org](http://www.judgewatch.org), via its top panel “Latest News”.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)  
[www.judgewatch.org](http://www.judgewatch.org)  
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**From:** Center for Judicial Accountability, Inc. (CJA) <[elena@judgewatch.org](mailto:elena@judgewatch.org)>  
**Sent:** Thursday, July 20, 2017 11:53 AM  
**To:** [stephanie.jones@rockinst.suny.edu](mailto:stephanie.jones@rockinst.suny.edu)  
**Cc:** [heather.trela@rockinst.suny.edu](mailto:heather.trela@rockinst.suny.edu); [jim.malatras@rockinst.suny.edu](mailto:jim.malatras@rockinst.suny.edu);  
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**Subject: STILL in search of scholarship: "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"-- June 16, 2015 forum**

**TO: Stephanie Jones/receptionist – Rockefeller Institute of Government**

Following up our phone conversation earlier this morning, below is my April 18, 2017 e-mail to Rockefeller Institute Deputy Director for Operations Robert Bullock, to which I received no response from him – and no response from any of its cc recipients to the information and expert opinions it had requested.

You stated that Mr. Bullock is no longer at the Rockefeller Institute of Government – and I now see that the webpage of the Rockefeller Institute for the New York State constitutional convention:

[http://www.rockinst.org/nys\\_concon2017/](http://www.rockinst.org/nys_concon2017/) has replaced Mr. Bullock's name with Chief of Staff Heather Trela. I have already left a voice mail message for Ms. Trela – and am sending this e-mail directly to her, as likewise, to the Rockefeller Institute's top "Research Staff":

[http://www.rockinst.org/about\\_us/staff/researchers/](http://www.rockinst.org/about_us/staff/researchers/):

President Jim Malatras, Director Tom Gais, and Deputy Director for Research Patricia Strach. Additionally, I am send it to all original recipients of my April 18, 2017 e-mail. Of the six "Team Members" who were then – and still are -- the Rockefeller Institute's "Advisors" for the constitutional convention, I see Peter Kiernan is a Rockefeller Institute "Visiting Fellow" for "Fiscal Policy" – apparently the largest of the Rockefeller Institute's research areas – and that Gerald Benjamin, Richard Brodsky, and Henry Greenberg are each members of the Rockefeller Institute's Board of Overseers:

[http://www.rockinst.org/about\\_us/board.](http://www.rockinst.org/about_us/board.)

As in April, so now, TIME IS OF THE ESSENCE. In view of the seriousness of what is at issue – the constitutionality and lawfulness of the \$150-plus billion New York State budget and the mass of corruption it engenders – I would hope that ALL recipients will respond expeditiously. Needless to say, to the extent that recipients suffer from conflicts of interests in discharging professional, scholarly, and civic responsibilities, they should so-state and take steps to ensure responses from those who are unconflicted or who can rise above same. The record of CJA's unfolding citizen-taxpayer action against the collusive constitutional officers of New York's three government branches is

here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/menu-2nd-citizen-taxpayer-action.htm>

Thank you.

Elena Sassower, Director  
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**From:** Center for Judicial Accountability, Inc. (CJA) [<mailto:elena@judgewatch.org>]

**Sent:** Tuesday, April 18, 2017 11:09 AM

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**Subject: In search of scholarship: "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"-- June 16, 2015 forum**

**TO: Rockefeller Institute of Government/Deputy Director of Operations Robert Bullock**

I thank you for taking the time to speak with me yesterday morning – not only because you are the Rockefeller Institute of Government’s coordinator of the consortium of entities working to educate the public on the 2017 constitutional convention ballot question, [http://www.rockinst.org/nys\\_concon2017/](http://www.rockinst.org/nys_concon2017/), but because you were among those who worked behind-the-scenes to make possible the June 16, 2015 forum “*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*”, which the Rockefeller Institute of Government sponsored with Albany Law School’s Government Law Center.

As discussed, I learned about the June 16, 2015 forum last year, while examining what scholarship, if any, the New York State Law Revision Commission had done on the state budget and other areas of the law that urgently require review and revision. I spoke with the executive director of that budget-starved Commission, Albany Law School Professor Rose Mary Bailey, as well as its chair, Peter Kiernan. Both told me about the June 16, 2015 forum – and did so in response to my inquiries to them about scholarship on the state budget and the Court of Appeals’ 2004 consolidated decision in *Silver v. Pataki/Pataki v. Assembly and Senate*, 4 NY3d 75 – as to which, I told them, I had found very little.

Unfortunately, the 2015 forum in which Mr. Kiernan participated – whose videos and accompanying continuing legal education syllabus I have posted on the “budget resource webpage” of CJA’s website: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/supreme-ct/2016/budget-resource-page.htm> -- only reinforced the exigent need for scholarship. Apart from the participants’ inability to meaningfully answer the question posed by moderator Henry Greenberg: “Let’s talk about the budget process circa 2015 and look forward. Does it work? Does anything need to be fixed? Is it exactly as it was? Is there something that requires constitutional reform?”, or to furnish a constitutional basis for representations about Governor David Paterson’s “extender budget”, none of the participants discussed, or even mentioned, the most important reason for the non-alteration clause of Article VII, §4 of the New York State Constitution restricting the Senate and Assembly in their amending of the Governor’s appropriation bills other than for the Legislative and Judiciary budgets, to which several participants did not even give acknowledgment. This reason is explicit in Article VII, §4 itself, but was barely referred to in the plurality opinion of then Judge Robert Smith – and not at all in his remarks at the June 2015 forum, nor in the remarks of Governor Pataki’s former chief counsel James McGuire, architect of *Pataki v.*

*Assembly*, whose 2011 article “*Pataki v. Assembly: The Unanswered Question*”, in the New York State Bar Association’s Government, Law & Policy Journal, included in the CLE syllabus, was also silent on the subject. Such reason – which the Assembly’s 2004 briefs to the Court of Appeals in *Silver v. Pataki* had highlighted and the dissenting opinion of then Chief Judge Judith Kaye had made reasonably prominent – is that, pursuant to Article VII, §4, once the Senate and Assembly reconcile each budget bill they have amended by the mandated striking or reducing of appropriation items, it becomes “law immediately without further action by the governor”. In other words, the New York Constitution, which does not enshrine the start of the fiscal year, provides for a “rolling budget”, enacted bill-by-bill – a constitutional scheme that makes obvious the flagrant unconstitutionality of what has become the all-encompassing finale of the budget “process”: the behind-closed-doors “three-men-in-a-room” budget dealmaking and amending of budget bills by the Governor, Temporary Senate President, and Assembly Speaker, adding on millions, if not billions, of dollars to achieve an “on-time” budget – is utterly irreconcilable and repugnant to what is laid out by Article VII, §§3, 4, 5, and 6 of the New York State Constitution – including the budgetary transparency contemplated by Article VII, §3 and required by Article III, §10.

A week and a half ago, I spoke with Mr. Greenberg, who, as you know, chairs the New York State Bar Association’s Committee on the New York State Constitution: <http://www.nysba.org/CustomTemplates/Content.aspx?id=71176>. I reiterated to him that I had been unable to find scholarship on the Court of Appeals’ *Silver v. Pataki/Pataki v. Assembly and Senate* decision or, for that matter, on the constitutional provisions governing the New York State budget. This is also what I told you.

**By this e-mail, I am formally requesting that the Rockefeller Institute’s listed six-member team of “Constitutional Convention Experts” – four of whom were participants in the June 16, 2015 forum – Professor Gerald Benjamin, Professor Peter Galie, Richard Brodsky, and Henry Greenberg – and its other two team members, Christopher Bopst and Henrik Dullea – identify where I might find:**

- (1) **scholarship on the Court of Appeals’ 2004 *Silver v. Pataki/Pataki v. Assembly and Senate* decision – and the constitutional provisions relating to the New York State budget;**
- (2) **scholars to whom I might furnish the “on-the-ground”, empirical evidence that the New York State budget is so flagrantly “OFF the constitutional rails” and violative of the *Silver v. Pataki/Pataki v. Assembly and Senate* 2004 Court of Appeals decision and Article VII, §§4, 5, 6 and Article III, §10 of the New York State Constitution as to mandate SUMMARY JUDGMENT declarations nullifying the newly-enacted budget for fiscal year 2017-2018 – relief being sought by a March 29, 2017 order to show cause, returnable on April 28, 2017.**

Needless to say, I also request their expert, scholarly assessment of the March 29, 2017 order to show cause. It is accessible from CJA's website, [www.judgewatch.org](http://www.judgewatch.org), via the prominent homepage link: "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance" – and I showed you, as likewise Mr. Greenberg before you, the webpage for it. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/9-2-16-osc-complaint/3-29-17-osc.htm>.

In the event Mr. Greenberg has not yet furnished the link for the webpage of the March 29, 2017 order to show cause to the members of the State Bar's Committee on the New York State Constitution – which I requested that he do so that each member might recognize the imperative of the Committee rendering a report on Article VII of the New York State Constitution – which it has not yet done – and of voting on other appropriate action, including steps to securing the State Bar's filing of an *amicus curiae* brief on the constitutional issues presented by the April 28, 2017 order to show cause, I reiterate that request now. As Mr. Kiernan is a member of the State Bar's Committee on the New York State Constitution, with Mr. Bopst a participant therein, I ask their endorsement of same. I will separately forward this e-mail to State Bar President Claire Gutekunst.

As Professor Vincent Bonaventure also participated at the June 16, 2015 forum, I left a voice mail for him yesterday, as yet unreturned. Therefore, by copy of this e-mail to him, I request that he – like the Rockefeller Institute's six-member team of "Constitutional Convention Experts" – likewise answer the above two questions – and furnish his scholarly assessment of the constitutional issues it presents. He anticipated that the Court of Appeals 2004 decision in *Silver v. Pataki/ Pataki v. Assembly and Senate* would open the way to another case. CJA's unfolding citizen-taxpayer action, challenging the constitutionality of the budget, with its March 29, 2017 order to show cause, is that case – one which intervenors and *amici* can powerfully expand and develop with their own powerful scholarship and constitutional insights.

Time being of the essence, I thank everyone, in advance, for their expeditious response to the straightforward evidentiary and legal presentation of the March 29, 2017 order to show cause. Certainly, too, I invite response from Messrs. Smith and McGuire – to whom I am also sending this e-mail.

Meantime, I would appreciate if you would furnish me with the names of the two scholars who raised questions and comments in the final "Discussion from the Trenches" portion of the June 16, 2015 program, but whose names are not indicated by captions on the videos, so that I might contact them on the subject of necessary scholarship. As for former Assembly majority counsel, Bill Collins, architect of the *Silver v. Pataki* litigation, who raised for discussion, *inter alia*, the unconstitutionality of "notwithstanding any other provision of law" clauses in budget bills – an aspect of unconstitutionality challenged in CJA's unfolding citizen-taxpayer action -- I would appreciate if you would forward this e-mail to him, with my request that he contact me, as I have not been able to locate contact information for him.

Thank you.

Elena Sassower, Director  
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