

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, April 29, 2019 10:10 AM
To: 'greenbergh@gtlaw.com'
Subject: FW: Misconduct by NYSBA General Counsel Baxter: request for amicus curiae support & scholarship for citizen-taxpayer challenge to the constitutionality of the NYS budget, NOW at the NY Court of Appeals on an appeal of right on the constitutional issues
Attachments: 4-15-16-email-from-baxter.pdf; 4-25-16-email-nysba.pdf; 4-26-19-email-nysba-fucillo.pdf; 4-26-19-blocked-nysba-fucillo.pdf

TO: New York State Bar Association President-Elect Henry Greenberg

This follows my voice mail message for you at approximately 4:45 pm on Friday, April 26, 2019, after being routed to your line by Amy, who stated you were gone for the weekend, returning today. Below is the self-explanatory e-mail I had just sent to President Miller, to which I referred in leaving you my voice mail message. As anticipated, because of the “block” that State Bar Counsel Baxter apparently placed and/or authorized to be placed to prevent my e-mails from being received by NYSBA.ORG recipients, it came back, as “blocked” – and I recited this in the e-mail message I then sent to President Miller at about 5:00 p.m. on Friday, *via* his law office e-mail feature. Its concluding paragraph read:

“I have meantime left a voice mail message for President-Elect Greenberg, who – as I stated to you – I had spoken with two years ago about amicus curiae support for the citizen-taxpayer action, then in Supreme Court/Albany County – and for scholarship as to it and the Court of Appeals’ 2004 decision in *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 NY 3d 75, so brazenly repudiated by defendants as to give us then – and NOW – a prima facie entitlement to summary judgment.”

As you will recall, the context of our having spoken together two years ago was your participation, as moderator, in 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*”, sponsored by the Rockefeller Institute of Government and Albany Law School’s Government Law Center – and your then chairmanship of the State Bar’s Committee on the New York State Constitution and participation in the Rockefeller Institute’s six-member panel of “Constitutional Convention Experts” working to educate the public about the November 2017 ballot question about a constitutional convention.

On April 18, 2017 – a week and a half after that conversation together, which had been by phone – I sent you an e-mail about it, bearing the subject line “In search of scholarship: ‘Budgets and the Balance of Power: The Lasting Impact of Silver v. Pataki and How It Shapes the Government in New York State’ – June 16, 2015 forum”. Having received no response, I re-sent it on July 20, 2017 by an e-mail with a subject line now reading “STILL in search of scholarship...”. To this, I also received no response and, on October 6, 2017, I re-sent the April 18, 2017 and July 20, 2017 e-mails to you, this time as attachments to an e-mail bearing the subject line: “Suing to Secure Constitutional Governance: Surer & More Expedient than a Constitutional Convention”. Again, I received no response.

For your convenience, you can find these important e-mails – whose content is ALL germane to my current request for the State Bar’s *amicus curiae* support and scholarship for the citizen-taxpayer action, NOW before the New York Court of Appeals – posted on CJA’s website, www.judgewatch.org, on a webpage pertaining to my 2017 outreach for scholarship and *amicus curiae* support, here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/supreme-ct/2017-silver-v-pataki-participants-rock-institute.htm>.

Within a day or two, I will be writing the other recipients of that 2017 e-mail correspondence – and will send you a copy. Meantime, until the NYSBA.ORG “block” is removed, I would appreciate your forwarding this e-mail to President

Miller and other State Bar leadership so as to expedite responsible action on my time-sensitive request for *amicus curiae* support and scholarship.

Needless to say, this request for *amicus curiae* support and scholarship provides a powerful, immediate opportunity for you and the State Bar to demonstrate the “Lesson of History” about which you spoke on April 18, 2019 at the 55th Charles Evans Hughes Lecture, held at the New York County Lawyers Association. Unfortunately, other than the summary of your speech on the State Bar’s website: [https://www.nysba.org/News/A Lesson of History/](https://www.nysba.org/News/A_Lesson_of_History/), written by State Bar Senior Messaging and Communications Specialist Joan Fucillo, I have not been able to find any link to the text of your speech – or video. As reflected by the above-attached, my April 26, 2019 e-mail to Ms. Fucillo, requesting same, came back as “blocked”.

Perhaps the speech is being embargoed for publication on “Law Day” – May 1st. If not, can you kindly send me your speech?

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, April 26, 2019 4:28 PM
To: 'mmiller@nysba.org' <mmiller@nysba.org>

Subject: Misconduct by NYSBA General Counsel Baxter: request for amicus curiae support & scholarship for citizen-taxpayer challenge to the constitutionality of the NYS budget, NOW at the NY Court of Appeals on an appeal of right on the constitutional issues

New York State Bar Association President Michael Miller

Thank you for your prompt call-back to the message I left with your service.

Here, with slight adjustments, is the e-mail I was composing on your law office email feature, summarizing the situation, when you called. If you do not receive it, *via* your above NYSBA.ORG email address that you provided me, it is because General Counsel Baxter has – without any explanation or notice to me – “blocked” all my e-mails from being received by NYSBA.ORG e-mails. The facts are as follows:

On April 18, 2019, after receiving no call-backs to three phone messages I had left, inquiring about the procedures for securing *amicus curiae* support & scholarship for a citizen-taxpayer action, challenging the constitutionality and lawfulness of the NYS budget, NOW before the NY Court of Appeals on an appeal of right on the issues of constitutional construction directly involved, I e-mailed General Counsel Baxter the below e-mail, with the above two attachments.

Instead of responding by telephoning or e-mailing me – or directing that such be done by other State Bar staff – Counsel Baxter apparently placed or authorized a “block” on my e-mail address so that all future e-mails from me would not be received by her or any other NYSBA.ORG recipients. I only discovered this yesterday – and today – upon sending such

further e-mails. These are posted, with the receipts reflecting the “blocking”, on the webpage I created for my 2019 outreach for *amicus curiae* support and scholarship of the appeal of right, here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/ct-appeals-outreach-for-amicus.htm>.

In view of the serious, substantial, and time-sensitive nature of my request for *amicus curiae* support and scholarship – as evidenced by my below April 18, 2019 e-mail and the further e-mail I attempted to send yesterday – kindly forward the request to all members of the State Bar’s Executive Committee without delay – or take such other steps as are consistent with the State Bar’s procedures in cases of this far-reaching magnitude and consequence to the People of the State of New York.

To ensure your receipt, I will additionally send this – with the necessary adaptations – via your office e-mail.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, April 18, 2019 3:56 PM
To: 'kbaxter@nysba.org' <kbaxter@nysba.org>
Cc: 'rkennedy@nysba.org' <rkennedy@nysba.org>; 'kmchargue@nysba.org' <kmchargue@nysba.org>; 'rrifkin@nysba.org' <rrifkin@nysba.org>; 'richardrifkin54@gmail.com' <richardrifkin54@gmail.com>; 'kkerwin@nysba.org' <kkerwin@nysba.org>; 'bmahan@nysba.org' <bmahan@nysba.org>

Subject: Request for Amicus Curiae Support & Scholarship: Citizen-taxpayer action challenging NYS budget -- NOW at the NY Court of Appeals on an appeal of right on the issues of constitutional construction directly involved

TO: Kathleen Baxter, General Counsel – New York State Bar Association

This follows up my phone conversation a short time ago with Barbara Mahan, to whom my call was routed when I phoned the State Bar to verify whether Kevin Kerwin was still the State Bar’s Deputy Director for Government Relations – and whether Richard Rifkin was still Special Counsel. Ms. Mahan identified that Mr. Kerwin had recently left the State Bar to work with a lobbying firm and that Mr. Rifkin continues in something of a consultant capacity. The reason I was inquiring was because both Messrs. Kerwin and Rifkin had been recipients of my above-attached April 25, 2016 e-mail – and I wanted to include them as cc’s to this e-mail. I recounted to Ms. Mahan much of what the below e-mail summarizes – and now I am furnishing her, you, and the other cc’s with it.

The reason for this e-mail is that it is now three days since I left a voice mail message for you – on Monday, April 15, 2019, at approximately 1:45 p.m. – asking to speak with you about my request for the State Bar’s *amicus curiae* support for an appeal of right to the New York Court of Appeals in CJA’s citizen-taxpayer action challenging the constitutionality and lawfulness of the state budget. In so doing, I identified that I had already left two prior messages on the voice mail of your senior assistant, Melissa O’Clair, to which I had received no call-back. These were on Thursday, April 4th, at approximately 3:40 pm, and on Friday, April 5th, at approximately 3:30 pm. Did you or she call me back?

Three years ago, I also received no call back from you – or anyone else – when I phoned seeking the State Bar’s *amicus curiae* assistance and intervention in Supreme Court/Albany County for CJA’s March 23, 2016 order to show cause and verified second supplemental complaint in our prior citizen-taxpayer action. Instead, following phone messages I left for you, for Ronald Kennedy, and for Mr. Kerwin – after leaving several voice mail messages for Kim McHargue, all unreturned – you sent me an April 15, 2016 e-mail entitled “Telephone Message”, stating:

“Ms. Sassower – I received your message. The Association does not have a committee that is charged with reviewing state budget issues.”

For your convenience, attached is that April 15, 2016 e-mail, as well as my responding April 25, 2016 e-mail – to which I received no response. Did you respond? What about the other State Bar staff to whom I sent my April 25, 2016 e-mail: Kim McHargue, Executive Assistant to the State Bar’s Executive Director; Mr. Kennedy, Director of Government Relations; his administrative assistant, Ms. Mahan; Mr. Kerwin; and Mr. Rifkin. If there was a written response, I ask that you send me a copy. And if there was no response, please advise why.

As for my voice mail message to you three days ago, it followed upon my phone conversation, several hours earlier, with New York City Bar Association Senior Legal Counsel Lauren Axelrod. My e-mail to her, later that afternoon, entitled “Request for Amicus Curiae Support – CJA’s second citizen-taxpayer action, with ten causes of action challenging the NYS budget & the ‘force of law’ commission pay raises, etc”, is below. In the interest of economy, I refer you to it in support of the identical request I am now formally making for the State Bar’s *amicus curiae* support of CJA’s appeal of right to the New York Court of Appeals. This replicates what I did by my April 25, 2016 e-mail, also furnishing a prior e-mail I had sent to the City Bar, in support of the request I was then making for the State Bar’s *amicus curiae* support and intervention.

As CJA’s March 23, 2016 verified second supplemental complaint in the prior citizen-taxpayer action – which was the subject of my April 25, 2016 e-mail to you – became, in material part, the September 2, 2016 verified complaint in CJA’s instant citizen-taxpayer action, now before the Court of Appeals, you are already familiar with its serious and substantial nature. All the facts, law, and substantiating proof as to what transpired in the ensuing three years – mandating the State Bar’s *amicus curiae* support NOW for our appeal of right on the issues of constitutional construction directly involved – are furnished by CJA’s webpage for my March 26, 2019 letter to the Court, which is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/3-26-19-ltr.htm>. And reinforcing what is there presented is the webpage for my April 11, 2019 letter to the Court, which is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/4-11-19-ltr-to-ct-appeals.htm>.

By any and every standard, what the March 26, 2019 and April 11, 2019 letters chronicle is catastrophic – requiring not only the State Bar’s IMMEDIATE *amicus curiae* support for the appeal of right on constitutional grounds – as to which time is of the essence – but EMERGENCY scholarship and activism by its committees. Therefore, please confirm, without delay, that you will be furnishing this e-mail – or at very least the links to the two webpages for those letters – to the State Bar’s leadership and appropriate committees. This would include, in addition to the State Bar’s Executive Committee, such other State Bar committees as: (1) its Committee on the New York State Constitution; (2) its Committee on State and Federal Constitutional Law; (3) its Committee on Courts of Appellate Jurisdiction; (4) its Committee on Legislative Policy; (5) its Committee on Civil Practice Law and Rules; (6) its Committee on Professional Ethics; (7) its Committee on Attorney Professionalism (with its Subcommittee on Government); (8) its Committee on Standards of Attorney Conduct; (9) its Committee on Professional Discipline; and (10) its Committee on Procedures for Judicial Discipline.

I am available to make a personal presentation in support of this request, to furnish hard copies of all documents, and to answer all questions, including under oath, so that the State Bar can discharge its civic, professional, and ethical duty to uphold and safeguard the rule of law, completely obliterated in the record of the citizen-taxpayer action, NOW before the Court of Appeals.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, April 15, 2019 3:56 PM
To: 'LAXELROD@NYCBAR.org' <LAXELROD@NYCBAR.org>
Cc: 'mcilenti@nycbar.org' <mcilenti@nycbar.org>

Subject: Request for Amicus Curiae Support -- CJA's second citizen-taxpayer action, with ten causes of action challenging the NYS budget & the "force of law" commission pay raises, etc.

TO: Lauren Axelrod/Senior Legal Counsel – New York City Bar Association

Thank you for your call – and for giving me the opportunity to furnish you with the background to CJA's second citizen-taxpayer action, NOW before the Court of Appeals on an appeal of right – for which I am requesting an *amicus curiae* brief from the City Bar Association, from the New York State Bar Association, and from other bar associations.

As you saw, everything is accessible from CJA's website, www.judgewatch.org, by its prominent center link: "CJA's Citizen-Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three-Men-in-a-Room' Governance". For your convenience, the direct link to CJA's webpage for my March 26, 2019 letter to the Court of Appeals, in support of our appeal of right in CJA's second citizen-taxpayer action is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/3-26-19-ltr.htm>. As discussed, the letter highlights the City Bar's 2007 devastating *amicus curiae* brief in the *McKinney* case – and transmitted a copy to the Court of Appeals, together with such other parts of the *McKinney* record as I was able to recover: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/inventory-mckinney-st-joseph.htm>.

As soon as I can, I will furnish a further presentation to you. However, I did want you to have the above direct links now – as they are the starting point for my request to the City Bar for what you will rapidly conclude to be a monumental case, worthy of the scholarship and advocacy I sought three years ago in the context of CJA's March 23, 2016 verified second supplemental complaint in our first citizen-taxpayer action: <http://www.judgewatch.org/web-pages/searching-nys/budget/budget-2016-17/outreach-good-gov-academia.htm>. As discussed, the second citizen-taxpayer action arises from that March 23, 2016 verified second supplemental complaint.

Thank you, earnestly.

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