

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, April 23, 2020 3:29 PM
To: 'akolstee@lpny.org'
Cc: 'tdorazio@lpny.org'; 'tcoburn@lpny.org'; 'bob@givemeliberty.org'
Subject: Follow-Up: GOOD NEWS FOR NY's THIRD PARTIES: You can EASILY challenge -- & win -- a lawsuit throwing out Part ZZZ of Budget Bill #S.7508-B/A.9508-B as UNCONSTITUTIONAL

Attachments: 3-18-20-ltr-to-gov-revised-fn1.pdf; 1st-lawsuit-16th-cause-of-action-3-men-in-a-room.pdf; 2nd-lawsuit-9th-cause-of-action-3-men-in-a-room.pdf

TO: Chautauqua County Libertarian Party Chair Andrew Martin Kolstee

Thank you, again, for the generous amount of time you gave to our phone conversation this morning (716-640-2089) – and for your swift contact of State Chair Tony D’Orazio and his equally swift response, inviting me to call him between 1 pm and 5 pm today. This replicates your swift e-mail response on April 20th to the e-mail I had just sent you, inquiring as to whether the Libertarian Party had, as yet, filed a lawsuit challenging the heightened ballot qualification provisions, embodied in the FY2020-21 state budget.

In our Monday’s phone conversation – which followed that initial e-mail exchange and preceded my below April 20th e-mail to all six of New York’s third parties with ballot lines -- I asked who would be the Libertarian Party’s attorney for such lawsuit. I was, therefore, delighted to see from the Libertarian Party’s April 21st website blog, “Judge Declares Republican’s Petition Invalid Due To Lack Of Libertarian Authorization”, that James Ostrowski, Esq. has been representing the Libertarian Party in election law proceedings. As discussed when we spoke this morning, Mr. Ostrowski would be an exceptional choice for the lawsuit proposed by my below April 20th e-mail, as he brought an important lawsuit, on behalf of 50 taxpayers, pertaining to the unconstitutionality of appropriations in the state budget, *Bordeleau v. State of New York*. That is why, when the Assembly voted on the FY202-21 debt service bill, the Court of Appeals’ indefensible 2011 majority decision in that case and its indefensible 1994 decision in *Schulz v. the State of New York*, brought by the Libertarian Party’s 1994 gubernatorial candidate Bob Schulz, were invoked to justify the bill’s patent violation of Article VII, §8, requiring voter approval for the debt being incurred. The VIDEO of the March 31, 2020 Assembly floor proceedings is here: https://nystateassembly.granicus.com/MediaPlayer.php?view_id=6&clip_id=5435 (see exchange between Assembly Minority Leader *Pro Tempore* Goodell and Assembly Majority Leader Peoples-Stokes).

Mr. Ostrowski would doubtless be particularly interested in my above-attached March 18, 2020 letter, with its analysis of the Court of Appeals’ plurality, concurring, and dissenting opinions in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75 (2004). Indeed, nearly eight years ago, I cc’d him and Bob Schulz on a July 9, 2012 letter identifying (at pp. 2-3) the exigent need for analytical scholarship of Court of Appeals decisions on constitutional questions, specifically citing the Court’s *Bordeleau* decision and quoting from Mr. Ostrowski’s January 23, 2012 reargument motion. Because that July 9, 2012 letter is no less relevant today, I placed it before the Court of Appeals in the *CJA v. Cuomo* (2nd) citizen-taxpayer action, to which my March 18, 2020 letter refers (at p. 2). It is the final exhibit to my final January 9, 2020 letter to the Court. CJA’s webpage on which you will find it, as Exhibit L, is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/1-9-20-ltr.htm>.

As discussed, I respectfully request that this e-mail, with its above three attachments, be forwarded to Mr. Ostrowski so that he might offer the Libertarian Party the benefit of his professional judgment about the lawsuit outlined by my below April 20th e-mail. As the Libertarian Party would also benefit from Bob Schulz’s wisdom, I am sending this e-mail to him directly by a cc.

Especially in light of this Sunday's Libertarian Party meeting, I reiterate my request that my April 20th e-mail, with its attachments, be forwarded to ALL members of the Libertarian Party's state committee and all its county chairs and contacts: <https://lpny.org/officers/> -- and that it be placed on the agenda for discussion. As I assume the meeting will be held, virtually, it would be my privilege to be invited to answer questions.

Meantime, I again commend the Libertarian Party for its webpage: "Protect Our Ballot Access": <https://lpny.org/fairvote/> – the first of the third parties to have such an exemplary page. This augurs well for the Libertarian Party's leadership.

I will call Chair D'ORazio shortly, at the number you furnished: 585-662-8187.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
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Subject: GOOD NEWS FOR NY'S THIRD PARTIES: You can EASILY challenge -- & win -- a lawsuit throwing out Part ZZZ of Budget Bill #S.7508-B/A.9508-B as UNCONSTITUTIONAL

TO: NEW YORK'S THIRD PARTIES WITH BALLOT LINES

Serve America Movement Party
Working Families Party
Conservative Party
Green Party
Libertarian Party
Independence Party

As you know, the "force of law" recommendations of the Public Campaign Financing and Election Commission – which the Conservative and Working Families Parties succeeded in striking down in their two coordinated state court lawsuits – are now, nonetheless, "the law", enacted by Part ZZZ of Budget Bill #S.7508-B/A.9508-B.

§10 of Part ZZZ imposes a significantly higher hurdle for parties to maintain their ballot lines – threatening the viability of each of you, except for the Conservative Party, which can seemingly meet its more rigorous qualification requirements. Yet because Part ZZZ contains a non-severability clause (§11), tying all sections together as an indivisible

package, the Conservative Party would presumably join, if not lead, a lawsuit challenging Part ZZZ, so as to knock out its public campaign financing provisions, as it rightfully should.

THE GOOD NEWS, which is the purpose of this e-mail, is to advise you that it is a slam-dunk for you to bring and win a lawsuit throwing out Part ZZZ as unconstitutional, as the Center for Judicial Accountability, Inc. (CJA) can provide you with the dispositive law and legal argument you need, based on the New York State Constitution. This includes:

(1) that Part ZZZ is policy legislation that could not be constitutionally included in Governor Cuomo's executive budget – over and beyond its violation of Article VII, §6 because it pertains to no appropriation in the FY2020-21 budget and is not limited thereto;

(2) that Governor Cuomo's so-called "Article VII" Budget Bill #S.7508-A/A.9508-B, allegedly for "Transportation, Economic Development, and Environmental Conservation" – into which Part ZZZ was inserted -- was itself unconstitutional;

(3) that the Governor Cuomo's behind-closed-doors, "three-men-in-a-room" budget deal-making with Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie, by which the Governor purported to "amend" his Article VII Bill #S.7508-A/A.9508-A, was unconstitutional;

(4) that the Legislature's "passage" of the "amended" Article VII Bill #S.7508-B/A.9508-B was unconstitutional and rife with statutory and legislative rule violations.

EVEN BETTER, the law and legal argument that CJA is able to provide is all embodied in open-and-shut, substantiating evidence – whose accuracy is uncontested. As illustrative, CJA's above-attached March 18, 2020 letter to Governor Cuomo, sent to him and Legislative Leaders by the below two e-mails. Entitled "GOOD NEWS DURING THE CORONAVIRUS EMERGENCY: You Can Chuck Six of Your Seven '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. As for CJA's citizen-taxpayer actions suing Governor Cuomo and his "'Partners in Government' for unconstitutionality, unlawfulness, and fraud with respect to the budget" - - to which the letter refers (at p. 2) – attached are the two cited causes of action (fn. 3) pertaining to the unconstitutionality of "three-men-in-a-room", behind-closed-doors budget-deal-making, *as unwritten and as applied*.

CJA's website, www.judgewatch.org, posts the evidence, in full. For your convenience, it is accessible from a webpage I created for this e-mail entitled "AGAIN, HELPING THE THIRD PARTIES, this time in a successful lawsuit to strike down Part ZZZ of Budget Bill #S.7508-B/A.9508-B as unconstitutional". This is part of a series of CJA's webpages for the 2020 Legislative Session, accessible from our homepage's prominent center link: "LEGISLATIVE SESSIONS: Comparing NY's Legislature BEFORE & AFTER its Fraudulent Pay Raise". The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/third-parties-good-news.htm>.

I look forward to discussing the foregoing with you, to answering your questions, and to working collaboratively on winning strategies, of nominal cost, based on law and evidence, benefiting ALL the People of the State of New York.

Needless to say, in this important 2020 election year when ALL New York's 213 legislative seats are on the ballot, no third party should endorse or confer its valuable party line to legislative incumbents whose gross nonfeasance and misfeasance in the performance of official duties, beginning with the unconstitutionality of the FY2020-21 budget, gives rise to the lawsuit. Indeed, now, more than ever, the third parties have an opportunity to demonstrate their vital function by fielding candidates who will "blow the whistle" on the corruption of Democratic and Republican legislators, in collusion with each other. This "whistle-blowing" requires no "big bucks" or public campaign financing. It requires only that candidates honored by your party

lines use the “bully-pulpits” they command by reason of their candidacies to alert voters to the self-dealing and posturing of the Democratic and Republican incumbents, as established by the evidence posted and accessible from CJA’s webpages for the 2020 Legislative Session: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/2020-session-menu.htm>. Suffice to say, there is nothing complex that the voters would not understand – and especially as to the larceny perpetrated by the Legislature’s **own** budget and the legislators’ **own** pay raises.

Thank you.

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From: elena@judgewatch.org <elena@judgewatch.org>
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Cc: 'David.Poleto@budget.ny.gov' <David.Poleto@budget.ny.gov>; 'foil@budget.ny.gov' <foil@budget.ny.gov>; 'perez@lbdc.state.ny.us' <perez@lbdc.state.ny.us>; 'scousins@nysenate.gov' <scousins@nysenate.gov>; 'grelick@nysenate.gov' <grelick@nysenate.gov>; 'speaker@nyassembly.gov' <speaker@nyassembly.gov>; 'vargash@nyassembly.gov' <vargash@nyassembly.gov>; 'flanagan@nysenate.gov' <flanagan@nysenate.gov>; 'cmills@nysenate.gov' <cmills@nysenate.gov>; 'BarclaW@nyassembly.gov' <BarclaW@nyassembly.gov>; 'herricks@nyassembly.gov' <herricks@nyassembly.gov>; 'engelk@nyassembly.gov' <engelk@nyassembly.gov>; 'skypej@nyassembly.gov' <skypej@nyassembly.gov>; 'gianaris@nysenate.gov' <gianaris@nysenate.gov>; 'weintrau@nysenate.gov' <weintrau@nysenate.gov>; 'griffo@nysenate.gov' <griffo@nysenate.gov>; 'kinderma@nysenate.gov' <kinderma@nysenate.gov>; 'PeopleC@nyassembly.gov' <PeopleC@nyassembly.gov>; 'haltonl@nyassembly.gov' <haltonl@nyassembly.gov>; 'aubryJ@nyassembly.gov' <aubryJ@nyassembly.gov>; 'hernandezd@nyassembly.gov' <hernandezd@nyassembly.gov>; 'goodella@nyassembly.gov' <goodella@nyassembly.gov>; 'lkrueger@nysenate.gov' <lkrueger@nysenate.gov>; 'usher@nysenate.gov' <usher@nysenate.gov>; 'seward@nysenate.gov' <seward@nysenate.gov>; 'davie@nysenate.gov' <davie@nysenate.gov>; 'WeinstH@nyassembly.gov' <WeinstH@nyassembly.gov>; 'wamchair@nyassembly.gov' <wamchair@nyassembly.gov>; 'ancowitzr@nyassembly.gov' <ancowitzr@nyassembly.gov>; 'beavers@nyassembly.gov' <beavers@nyassembly.gov>; 'peakec@nyassembly.gov' <peakec@nyassembly.gov>; 'rae@nyassembly.gov' <rae@nyassembly.gov>; 'derocht@nyassembly.gov' <derocht@nyassembly.gov>; 'lentolj@nyassembly.gov' <lentolj@nyassembly.gov>; 'morinelloa@nyassembly.gov' <morinelloa@nyassembly.gov>; 'webere@nyassembly.gov' <webere@nyassembly.gov>

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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From: elena@judgewatch.org <elena@judgewatch.org>
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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.

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