

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, November 21, 2019 6:55 PM
To: 'Cameron Macdonald'
Subject: Opps! -- Corrected -- Delgado v. State of New York -- at the Court of Appeals
Attachments: 8-21-19-nylj-ltr.pdf

Below is my e-mail to you, which had inadvertently omitted the words "I was informed" – now added.

Thanking you, in advance.

Elena

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, November 21, 2019 4:01 PM
To: 'Cameron Macdonald' <cam@govjustice.org>
Subject: Delgado v. State of New York -- at the Court of Appeals

Dear Mr. MacDonald –

Hope you are well.

In response to my inquiry at the Court of Appeals as to the status of your direct appeal, of right, in *Delgado v. State of New York*, I was informed that, on August 30th, a *sua sponte* jurisdictional inquiry letter was sent, signed by Clerk Asiello, to which you and the Attorney General responded on September 9th – with a prior September 3rd letter having been filed by the Attorney General advising that she had withdrawn her appeal to the Appellate Division, Third Department.

Do you have a website where these are posted? If not, would you kindly e-mail me pdfs?

Thank you.

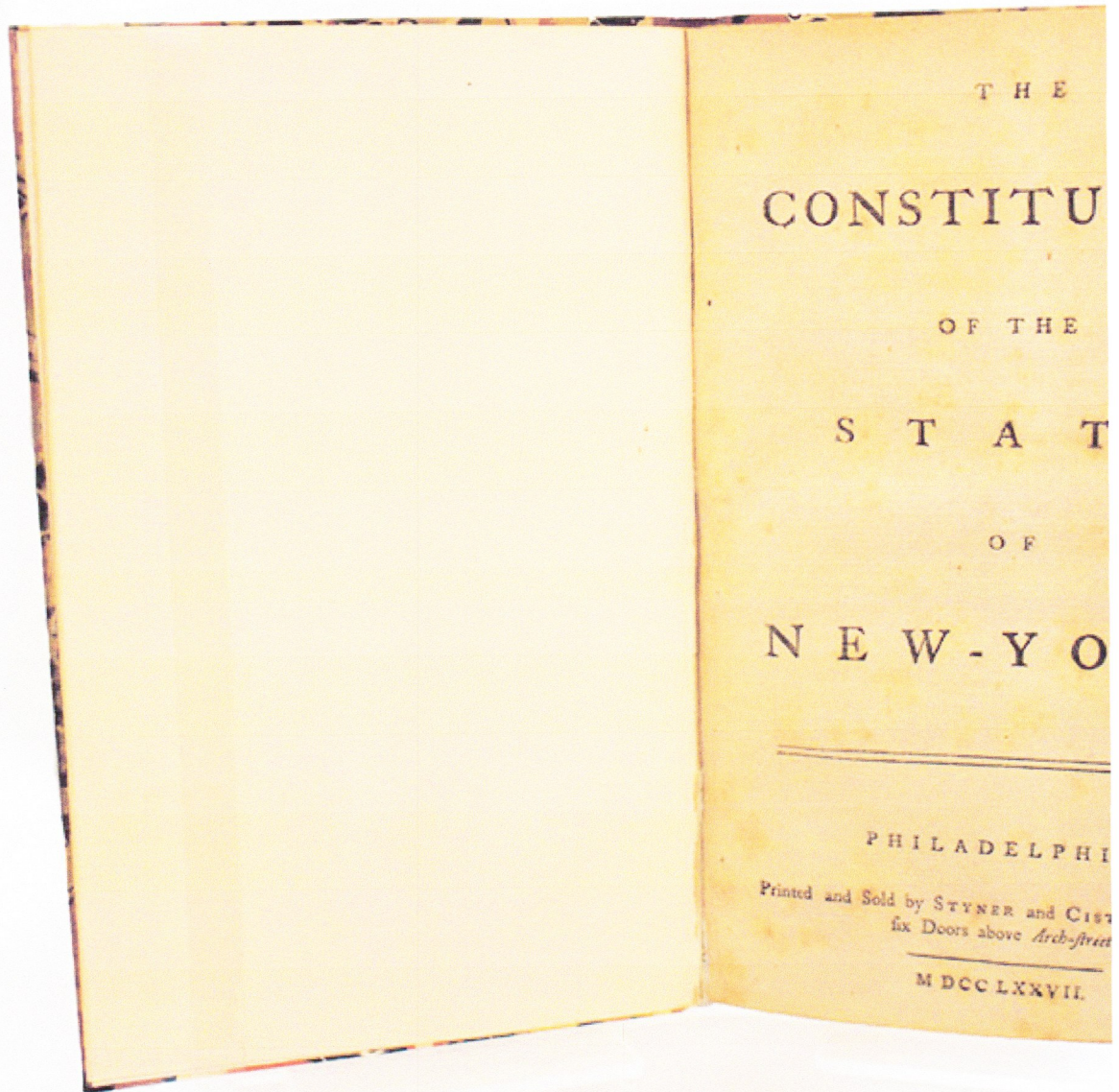
Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
elena@judgewatch.org
914-421-1200

P. S. I assume you saw my August 2019 letter to the editor in the New York Law Journal, above-attached and below.

A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA

Where are the voices of the scholars of the New York state constitution and other experts of law and political science about the “clear violation” that has been going on in statutorily delegating legislative powers to commissions?

By Elena Sassower | August 20, 2019 at 02:26 PM



The Constitution of the State New York, 1777. Photo: The Library Company of Philadelphia Constitution Center

New York—the “Excelsior State”—has 13 law schools, a 70,000-plus-member state bar association, countless county, city and specialized bar associations, a vast array of universities, colleges and other schools with scholars of constitutional law and political science, as well as think tanks and research institutes. Yet, it was solo practitioner Roger Bennet Adler who sounded the alarm by his recent perspective column entitled [“It’s Legally Perilous to Have a Commission Responsible for Election Laws”](#) whose internet subtitle (8/9/19) and stand-out text in its print edition (8/13/19) was even more stark, reading: “Simply put, there are no available legislative shortcuts around the State Constitution. The recent attempts to ignore it to raise legislative and executive salaries via an appointed commission is in clear violation.”

Where are the voices of the scholars of the New York state constitution and other experts of law and political science about the “clear violation” that has been going on in statutorily delegating legislative powers to commissions? The most

cursory investigation would reveal it to be even more flagrantly unconstitutional than what Mr. Adler so admirably describes.

I should know. For more than seven years, I have been single-handedly litigating its unconstitutionality and unlawfulness, as written, as applied and by its enactment in three major lawsuits, brought expressly “on behalf of the People of the State of New York & the Public Interest,” The third of these lawsuits, encompassing the prior two, is now before the New York Court of Appeals, appealing by right and by leave the Appellate Division, Third Department’s December 27, 2018 decision in *Center for Judicial Accountability, Inc. v. Cuomo*, 167 A.D.3d 1406.

This is the decision Mr. Adler identifies and describes as being one of three decisions cited by Albany Supreme Court Justice Ryba in her June 7, 2019 decision upholding the constitutionality of the statutory delegation of legislative power challenged in *Delgado v. State of New York*. In fact, *CJA v. Cuomo* is the first decision to which Justice Ryba cites—and eight times in total—because it is the decision on which she relies, involving, as it does, a materially identical statute. As for Mr. Adler’s description that the *CJA v. Cuomo* decision “upheld the delegation to the commission to increasing judicial salaries”—implying that it did not uphold delegation of legislative and executive salaries, this is incorrect. It upheld these, as well.

The shocking record of *CJA v. Cuomo*—including before the Court of Appeals—is accessible from the [Center for Judicial Accountability’s website](#) and powerfully refutes Mr. Adler’s assertion that “legislating by proxy commissioners, is doomed to failure when judicially challenged.”

Likewise, his further comment that a newly-commenced lawsuit challenging the constitutionality of the Public Campaign Financing and Election Commission “is an initial salvo in a legal struggle to vindicate the plain words of the State Constitution, and hold the Legislature constitutionally accountable.”

I invite Mr. Adler to join with me in rallying scholars, experts and just plain civic-minded attorneys to examine and report on the record and to file amicus curiae briefs with the Court of Appeals. Especially is this important because *CJA v. Cuomo* is dispositive of *Delgado* and of the five current other lawsuits challenging delegations of legislative power to commissions/committees—a fact I stated to the Court of Appeals, most recently by an August 9, 2019 letter—without contest from the Attorney General.

Elena Sassower is the director of the Center for Judicial Accountability.

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, November 22, 2019 1:44 PM
To: 'letitia.james@ag.ny.gov'; 'Barbara.Underwood@ag.ny.gov'
Cc: 'Paladino, Victor'; 'Brodie, Frederick'; 'Cameron Macdonald'
Subject: Delgado v. State of New York -- direct appeal to the Court of Appeals

**TO: Attorney General Letitia James
Solicitor General Barbara Underwood**

Reference is made to the direct appeal, to the Court of Appeals, by the plaintiffs in *Delgado v. State of New York* of the June 7, 2019 decision/judgment of Supreme Court Justice Christina Ryba. I am informed by the Clerk's Office that on August 30, 2019, Clerk Asiello signed a *sua sponte* jurisdictional inquiry letter, in response to which you filed:

- (1) a September 3, 2019 letter advising that you had withdrawn your appeal to the Appellate Division, Third Department of Justice Ryba's decision/judgment; and
- (2) a September 9, 2019 letter.

I assume you have pdfs of these. I would greatly appreciate if you would e-mail them to me and – if possible – Clerk Asiello's August 30, 2019 *sua sponte* jurisdictional inquiry letter – and the responding September 9, 2019 letter of the *Delgado* plaintiffs.

By copy of this letter to plaintiffs' counsel, Cameron MacDonald, I reiterate the e-mail request I made to him yesterday for the same, as yet unresponded-to.

Thank you.

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

From: Paladino, Victor <Victor.Paladino@ag.ny.gov>
Sent: Friday, November 22, 2019 2:08 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: RE: Delgado v. State of New York -- direct appeal to the Court of Appeals
Attachments: State's response to CTA SSD letter.pdf; CTA update letter (withdrawal of defendants' AD appeal).pdf; CTA SSD letter.pdf

The requested material are attached.

Victor Paladino
Senior Assistant Solicitor General
New York State Office of the Attorney General
Division of Appeals & Opinions
The Capitol
Albany, New York 12224-0341
(518) 776-2012
(518) 915-7723 (fax)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Friday, November 22, 2019 1:44 PM
To: James, Letitia <Letitia.James@ag.ny.gov>; Underwood, Barbara <Barbara.Underwood@ag.ny.gov>
Cc: Paladino, Victor <Victor.Paladino@ag.ny.gov>; Brodie, Frederick <Frederick.Brodie@ag.ny.gov>; 'Cameron Macdonald' <cam@govjustice.org>
Subject: Delgado v. State of New York -- direct appeal to the Court of Appeals

[EXTERNAL]

TO: **Attorney General Letitia James**
Solicitor General Barbara Underwood

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By copy of this letter to plaintiffs' counsel, Cameron MacDonald, I reiterate the e-mail request I made to him yesterday for the same, as yet unresponded-to.

Thank you.

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To: 'Paladino, Victor'
Cc: 'Cameron Macdonald'
Subject: Thank you, Asst. Solicitor General Paladino -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Assistant Solicitor General Paladino,

Thank you for your prompt response, furnishing pdfs of (1) Clerk Asiello's August 30, 2019 *sua sponte* jurisdictional inquiry letter; (2) your September 9, 2019 responding letter; and (3) your further October 2, 2019 letter.

By copy of this e-mail to Mr. MacDonald, I reiterate my request for his own September 9, 2019 responding letter to the jurisdictional inquiry.

Again, thank you.

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TO: Attorney General Letitia James
Solicitor General Barbara Underwood

Center for Judicial Accountability, Inc. (CJA)

From: Cameron Macdonald <cam@govjustice.org>
Sent: Friday, November 22, 2019 2:46 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Re: Thank you, Asst. Solicitor General Paladino -- Delgado v. State of New York -- direct appeal to the Court of Appeals

I was working on a filing yesterday and getting caught up today. I don't know why you think you should get a response within less than 24 hours. And why do you want what was submitted to the court?

Cameron Macdonald
Government Justice Center
cam@govjustice.org
T - (518) 434-3125
C - (443) 621-8904

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Sent: Friday, November 22, 2019 3:07 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: Apologies, if you've taken offense, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Mr. MacDonald –

Apologies if you've taken offense.

Inasmuch as Justice Ryba's decision upholds the constitutionality of the legislative delegation of power you challenge by resting on the Appellate Division, Third Dept's decision in *CJA v. Cuomo*, aren't you eager to share with me what you had to say to the Court of Appeals on that subject.

Kindly e-mail me your September 9, 2019 response to the *sua sponte* jurisdictional inquiry, which Assistant Solicitor General Paladino was good enough to provide.

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To: Center for Judicial Accountability, Inc. (CJA)
Subject: Re: Apologies, if you've taken offense, Mr. MacDonald -- Delgado v. State of New York
-- direct appeal to the Court of Appeals

You haven't answered my question. What do you intend to do with it?

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Sent: Friday, November 22, 2019 3:22 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: Answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Mr. MacDonald –

It should be obvious that I intend to read it. Do you need more information than that?

Just as Assist. Solicitor General Paladino sent me his letters, promptly and without inquiry as to why I wanted them, please send me yours – of September 9th – and any further letters you submitted to the Court.

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Subject: Re: Answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

I do need more information than that. I have my clients' interests in their litigation to protect.

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Sent: Friday, November 22, 2019 3:59 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: Again, answering your question, Mr. MacDonald -- Delgado v. State of New York -- direct appeal to the Court of Appeals

Dear Mr. MacDonald –

If you were actually interested in protecting your clients' interests – and winning on the important constitutional issues – you would have embraced my outreach to you in mid-December of last year, upon your filing of your summons and complaint in Supreme Court/Albany County – which you spurned, then and thereafter.

CJA v. Cuomo is – as you know – at the Court of Appeals and I will be filing a motion on Monday, which should be of great interest to you. If you will not furnish me with your September 9, 2019 letter, I will so advise the Court that you were unwilling to provide it to me.

Please advise how you wish me to proceed.

Thank you.

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Dear Mr. MacDonald –

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewidth.org>
Sent: Friday, November 22, 2019 4:31 PM
To: 'Cameron Macdonald'
Cc: 'Paladino, Victor'
Subject: News Flash: Yesterday the Court of Appeals decided the direct appeal in Delgado v. State of New York

Dear Mr. MacDonald,

After sending you the below e-mail, I called the Clerk's Office at the Court of Appeals and was informed that the Court yesterday decided your direct appeal to the Court of Appeals by transferring it to the Appellate Division, Third Department: <https://www.nycourts.gov/ctapps/Decisions/2019/Nov19/DecisionList112119.pdf>.

Please furnish me with your September 9th letter, as I have requested.

Thank you.

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