

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, July 1, 2019 2:28 PM
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'rb34@columbia.edu'; 'jrodgers@law.columbia.edu'; 'sophia.sunseri@law.columbia.edu';
'ssunseri@law.columbia.edu'
Subject: Again: STATUS? -- Request for Amicus Curiae Support & Scholarship: Landmark citizen-taxpayer action, NOW at the Court of Appeals, on an appeal of right, on the issues of constitutional construction directly involved

TO: Faculty Directors of the Center for Constitutional Governance/Columbia University Law School

Law Professor Gillian E. Metzger
Law Professor Jessica Bulman-Pozen
Law Professor Olatunde C. Johnson

This follows up my phone conversation earlier this afternoon with Center Coordinator Sophia Natasha Sunseri, who – when I informed her that I had received no response from you to my e-mails requesting *amicus curiae* support and scholarship for CJA’s landmark citizen-taxpayer action – stated to me that you are all now “away for the summer”.

Below are my May 2, 2019 and April 17, 2019 e-mails to you about CJA’s citizen-taxpayer action challenging the constitutionality of the New York State budget and the commission-based judicial salary increases it embeds. Did you respond? And if not, why not? Did not one of you, as Faculty Directors of Columbia Law School’s Center for Constitutional Governance, think that the multitude of constitutional issues presented by my March 26, 2019 and April 11, 2019 letters to the New York Court of Appeals in support of an appeal of right warranted *amicus curiae* support and scholarship? And what did you think would happen – and should happen – constitutionally, at the Court of Appeals? Did you have any doubts that appellants’ entitlement to an appeal of right pursuant to Article VI, §3(b)(1) of the New York State Constitution is absolute?

Please be advised that by reason of the Court of Appeals’ May 2, 2019 decision, *sua sponte* dismissing my appeal of right on the standard boilerplate “no substantial constitutional issue is directly involved”, the citizen-taxpayer action now presents a succession of further constitutional issues, directly relating to the constitutionality and functioning of the Court of Appeals. These are particularized by my two motions to the Court, both returnable a week from today, on Monday, July 8, 2019. They are:

- a May 31, 2019 motion for reargument/renewal & vacatur, determination/certification of threshold issues, disclosure/disqualification & other relief, which is posted here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/5-31-19-reargument-etc.htm>; and
- a June 6, 2019 motion for leave to appeal pursuant to Article VI, §3(b)(6) of the New York State Constitution, posted here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/6-6-19-leave.htm>.

What is your expert opinion of these two motions? Please let me hear from you – and, especially, from Faculty Director Metzger, as she is the “Stanley H. Fuld Professor of Law at Columbia Law School”, presumably having some responsibility for scholarship relating to the New York Court of Appeals. Chief Judge Fuld’s January 27, 1967 speech to the New York State Bar Association is quoted by the June 6, 2019 motion (at pp. 7-8) as part of its “rudimentary analysis” of the “mandatory leave to appeal, contained in the last sentence of Article VI, §3(b)(6)”.

Surely, too, Faculty Director Metzger is familiar with Chief Judge Fuld's powerful dissent from the Court's 1971 decision in *Hidley v Rockefeller*, 28 N.Y2d 439, 447, where he would have declared unconstitutional the deficiencies of itemization in the state budget and its transfer provisions. CJA's citizen-taxpayer action seeks to make his dissent a majority decision – and the June 6, 2019 motion so-reflects (at pp. 18-19), stating:

“Other ‘settled law’ of this Court relating to the budget, whose need for revisiting and modification is established by the record herein, are *Hidley v. Rockefeller*, 28 NY2d 439 (1971) [R.164-165] and *Saxton v. Carey*, 44 NY2d 545 (1978) [R.1140-1142], both pertaining to itemization and interchange/transfer provisions. Each decision proceeds on the catastrophically false premise of a checks and balances/separation of powers between the Legislative and Executive branches, rather than, as here proven, a collusion of powers between them, aided and abetted by the Judiciary, to effect a larceny of taxpayer monies, whose sums, whether ‘itemized’ or cumulative, they all conceal.” (underlining in the original).

Moreover, in light of Faculty Director Metzger's 2015 law review article “*The Constitutional Duty to Supervise*”, 24 Yale Law Journal 1836, it would seem she would have much to contribute to the question of the constitutionality of the “force of law” delegation of legislative power to the Commission on Legislative, Judicial and Executive Compensation, challenged by the citizen-taxpayer action – as to which NOT a single law professor has come forward to opine.

Time is of the essence. Please let me hear from you, as soon as possible – including as to the names of ALL Columbia Law School professors having an expertise in the New York State Constitution and the New York Court of Appeals, so that I might contact them directly. It is for that reason that I am furnishing this e-mail to the other recipients of my below two e-mails.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, May 2, 2019 1:53 PM
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Cc: 'capi@law.columbia.edu' <capi@law.columbia.edu>; 'berit.berger@law.columbia.edu' <berit.berger@law.columbia.edu>; 'etp2113@columbia.edu' <etp2113@columbia.edu>; 'rb34@columbia.edu' <rb34@columbia.edu>; 'jrodgers@law.columbia.edu' <jrodgers@law.columbia.edu>; 'sophia.sunseri@law.columbia.edu' <sophia.sunseri@law.columbia.edu>

Subject: STATUS? -- Request for Amicus Curiae Support & Scholarship: Landmark citizen-taxpayer action, NOW at the Court of Appeals, on an appeal of right, on the issues of constitutional construction directly involved

TO: Faculty Directors of the Center for Constitutional Governance/Columbia University Law School
Law Professor Jessica Bulman-Pozen
Law Professor Olatunde C. Johnson
Law Professor Gillian E. Metzger

Last Friday, April 26, 2019, I called to ascertain the status of my below April 17, 2019 e-mail to the Center, entitled “Request for Amicus Curiae Support & Scholarship: Landmark citizen-taxpayer action, NOW at the Court of Appeals, on an appeal of right, on the issues of constitutional construction directly involved” – to which I had received no response.

As on April 17th, I again spoke with Center Coordinator Sophia Natasha Sunseri. She told me she had forwarded my April 17th e-mail to the three of you – as the Center’s three “faculty directors” – but explained that because it was the “end of the semester”, it was a very busy time.

Is this, in fact, the real reason I have not received, from any one of you, a phone call or e-mail during these past two weeks? Has not one of you been able to review my DISPOSITIVE March 26, 2019 and April 11, 2019 letters to the New York Court of Appeals in support of the appeal of right? And when do you anticipate being able to do so? How about the Center’s 11 “affiliated faculty”? If you were too busy, did you not reach out to them for an assist for what your most cursory inspection would have revealed to be a monumental case pertaining to the constitutionality of the Court of Appeals’ handling of appeals of right on constitutional issues – and governance of this state

And what about the Center for the Advancement of Public Integrity (CAPI)? Did you also not reach out to it for the collaboration my e-mail suggested. Or did CAPI contact you – and was there any disclosure of conflicts of interest, as, for instance, pertaining to Professor Richard Briffault, a member of its advisory board and one of your own “affiliated faculty”.

So that you can see the status of my April 16, 2019 e-mail to CAPI for its *amicus curiae* support and scholarship, the pertinent correspondence, including about Professor Briffault, is posted on CJA’s webpage relating to our *amicus/scholarship* requests for the appeal of right to the Court of Appeals, here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/ct-appeals-outreach-for-amicus.htm>.

I take this opportunity to bring to your attention Columbia University’s “Statement of University Policy on Conflicts of Interest”, <http://www.columbia.edu/cu/vpaa/handbook/appendix.html>. Do you believe your handling of my April 17, 2019 e-mail comports therewith?

Please advise, as immediately as possible. As stated by my April 17th e-mail, “time is of the essence”.

Thank you.

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Center for Judicial Accountability, Inc. (CJA)
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Wednesday, April 17, 2019 1:10 PM
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Cc: 'capi@law.columbia.edu' <capi@law.columbia.edu>

Subject: Request for Amicus Curiae Support & Scholarship: Landmark citizen-taxpayer action, NOW at the Court of Appeals, on an appeal of right, on the issues of constitutional construction directly involved

TO: Center for Constitutional Governance/Columbia University Law School
ATT: Sophia Natasha Sunseri

Following up our brief conversation this morning, for which I thank you, this is to formalize my request for an *amicus curiae* brief from the Center for Constitutional Governance in support of an appeal of right, on constitutional grounds, to the New York Court of Appeals, of a citizen-taxpayer action, challenging, by ten causes of action, the constitutionality of the whole of the state budget – and of the commission-based judicial pay raises it embeds.

Like the case below, the appeal is brought expressly “on behalf of the People of the State of New York & the Public Interest”, by our non-partisan, non-profit citizen’s organization, Center for Judicial Accountability, Inc. (CJA). Our website, www.judgewatch.org, posts the entire record of the case, accessible from the prominent homepage link: “CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget ‘Process’ and Unconstitutional ‘Three-Men-in-a-Room’ Governance”.

The starting point for review of this *amicus curiae* request is, as I showed you, the webpage for my March 26, 2019 letter to the Court of Appeals in support of the appeal of right: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/3-26-19-ltr.htm>. In addition to furnishing links to the underlying substantiating EVIDENCE, the posted letter summarizes the relevant facts and law, concluding, *without exaggeration*, as follows:

“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...” (at p. 21, underlining in the original).

My subsequent April 11, 2019 letter to the Court: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/4-11-19-ltr-to-ct-appeals.htm> reinforces the seriousness of the issues of constitutional construction and magnitude entitling appellants to an appeal of right.

As time is of the essence with regard to this *amicus curiae* request, kindly forward this e-mail to ALL scholars associated with Columbia Law School’s Center for Constitutional Governance, immediately.

Finally, notwithstanding the Center’s name and website description of itself, <https://www.law.columbia.edu/constitutional-governance>, as a “nonpartisan legal and policy organization devoted to the study of constitutional structure and authority...”, with a “Mission” and “central goal” to “provide a forum where academics, government officials, practitioners, students, and others can engage with the major constitutional and governance issues of the day”, it appears that the Center’s focus is primarily on the United States Constitution – NOT the New York State Constitution. I believe you confirmed as much, prompting me to state that this needs to change, immediately, as THE ABSENCE OF SCHOLARSHIP PERTAINING TO THE NEW YORK STATE CONSTITUTION, *as written and as applied*, is a key reason why New York’s government is so flagrantly “OFF THE CONSTITUTIONAL RAILS” – and why, at all levels, it is rife with corruption and fraud. Examination of the record of our citizen-taxpayer action – and the wealth of other primary-source, documentary evidence posted on our website – makes this obvious.

In that regard, below is the e-mail I sent yesterday to Columbia Law School’s Center for the Advancement of Public Integrity, likewise requesting its *amicus curiae* support for the citizen-taxpayer action and scholarship based thereon. So as to facilitate collaboration between the two Centers, a copy of this e-mail is being sent to it.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, April 16, 2019 4:15 PM
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Subject: Request for Amicus Curiae Support & Scholarship: Citizen-Taxpayer Action, NOW at the Court of Appeals, Suing All 3 NYS Gov't Branches for Corruption with respect to the NYS budget -- & the commission-based pay raises it gives them

TO: Center for the Advancement of Public Integrity (CAPI)/Columbia University Law School
Executive Director Berit Berger

This follows up my phone conversation this morning with Program Officer Rosie Fatt, who spoke with me at fair length, doing the necessary intake to assist you.

The reason for my call was, in the first instance, to speak with you about a monumental citizen-taxpayer action, now at the New York Court of Appeals, suing the constitutional officers of New York's three government branches for corruption with respect to the state budget and the commission-based salary increases it embeds -- of which they are all now beneficiaries.

The lawsuit, presenting ten causes of action -- including the first-ever-cause of action to challenge the constitutionality of "three-men-in-a-room" budget deal-making -- is before the Court of Appeals on an appeal of right -- and I am requesting that CAPI file an *amicus curiae* brief in support. As I showed Rosie, the full lawsuit record is accessible from CJA's website, www.judgewatch.org, via the 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 the webpage for my March 26, 2019 letter to the Court of Appeals in support of the appeal of right is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/3-26-19-ltr.htm>. It furnishes all the relevant facts and law. However, as I showed Rosie, you will also want to examine my April 11, 2019 letter to the Court: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/4-11-19-ltr-to-ct-appeals.htm>, as it not only details the state of the record, *vis-à-vis* the Attorney General's opposition to the appeal of right, but identifies an issue impacting on CAPI's work to secure public campaign financing, namely, the unconstitutionality of the commission on public campaign financing, inserted into the 2019-2020 revenue budget bill, following this year's "three-men-in-a-room" budget deal-making.

I also explained to Rosie that quite apart from my *amicus curiae* request, the second reason for my call was to furnish CAPI with primary-source, empirical evidence for scholarship -- as it is plain that its 2018 study of "Oversight and Enforcement of Public Integrity" in New York is not so-based: <https://www.law.columbia.edu/capi-map#capi-mapinfo>. Indeed, the record of CJA's citizen-taxpayer action -- and the underlying documentary evidence on which it rests: <http://www.judgewatch.org/web-pages/judicial-compensation/menu-ny-judicial-compensation.htm> -- "blows to smithereens" CAPI's 2018 New York study, beginning with the entities it identifies as part of New York's "substantial anti-corruption system" and "Oversight Structure": the Attorney General and Comptroller. This, because the Attorney General and Comptroller are each defendants-appellants in the citizen-taxpayer action, with the Attorney General, additionally, counsel.

Obviously, time is of the essence with regard to this *amicus curiae* request. Inasmuch as CAPI's study asserts:

"New York State's corruption issues have received unusual attention from scholars and activists, due to the state's position as a financial, cultural, and intellectual hub. Factors

commonly cited as contributing to corruption in the state include: concentration of power – particularly budgetary discretion – in the ‘three men in a room’ (governor, senate majority leader, and assembly speaker)...and the lack of press coverage of Albany”,

can CAPI assist us in building a coalition of such “scholars and activists” who, together with CAPI, will file an *amicus* brief on the corruption and constitutional issues – including as to the unconstitutionality of “three men in a room” budget deal-making? Will CAPI contact them, on our behalf? How about New York’s bar associations – and, additionally, the “many reform-oriented civil society organizations” in New York, so-identified by CAPI’s study. How about press coverage? Certainly, CAPI can easily reach out to Columbia’s journalism programs, including its Graduate School of Journalism, to find student journalists to investigate and report on CJA’s extraordinary, corruption-ending case, could it not?

I look forward to hearing from you, as soon as possible.

Thank you.

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