

## **Center for Judicial Accountability, Inc. (CJA)**

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Tuesday, April 18, 2017 2:25 PM  
**To:** 'wendy.weiser@nyu.edu'; 'lawrence.norden@nyu.edu'; 'fritz.schwarz@nyu.edu'; 'fschwarz@cravath.com'; 'eric.lane@hofstra.edu'  
**Cc:** 'nathaniel.sobel@nyu.edu'  
**Subject:** OPPORTUNITY/OBLIGATION -- citizen-taxpayer action: March 29, 2017 OSC for declaration of unconstitutionality & unlawfulness of NYS budget -- returnable April 28, 2017

### **TO: BRENNAN CENTER FOR JUSTICE – DEMOCRACY PROGRAM**

**Wendy Weiser, Director – Democracy Program**  
**Lawrence Norden, Deputy Director – Democracy Program**  
**Frederick A. O. Schwarz, Jr. – Chief Counsel**

### **TO: PROFESSOR ERIC LANE/Eric T. Schmertz Distinguished Professor of Law & Public Service-HOFSTRA LAW SCHOOL**

This follows my phone conversation earlier today with Nathaniel Sobel, Special Assistant to the Director of the Brennan Center's Democracy Program – and the subsequent phone message I left for Hofstra Law Professor Eric Lane, formerly a Brennan Center senior fellow, whose article "*Albany's Travesty of Democracy*", 7 City Journal 48 (Spring 1997), gave rise to the Brennan Center's devastating 2004, 2006, and 2008 reports assessing New York's legislature as THE MOST DYSFUNCTIONAL of state legislatures and Congress, attributing this to legislative rules vesting autocratic powers in leadership and emasculating members and committees. Yet omitted from the Brennan Center reports was any examination of the New York State budget – and so-acknowledged by former Brennan Center staffer Jeremy Creelan, in response to questioning at the February 25, 2009 hearing of the Temporary Senate Committee on Rules and Administration Reform, upon conclusion of his stellar testimony and that of Professor Lane and Mr. Norden. The video of the hearing is, posted on CJA's website, [www.judgewatch.org](http://www.judgewatch.org), here:

While I have no recollection of having previously reached out to Ms. Weiser, I have reached out, repeatedly to Mr. Norden, Professor Lane – and, last year, to Mr. Schwarz – informing them of the citizen-taxpayer action commenced in 2014 by our non-partisan, non-profit citizens' organization, laying out the mountain of constitutional, statutory, and legislative rule violations that presumably the Brennan Center would have chronicled had it included the New York State budget in its scholarship. Most important was our March 23, 2016 second supplemental complaint, with its first ever constitutional challenge to closed-door party conferences that substitute for open legislative committee deliberations and vote, crediting (at ¶365) the challenge to Professor Lane's "*Albany's Dysfunction Denies Due Process*", 30 Pace L. Rev. 965, 992, 997-998 (2010) -- and also challenging, for the first time ever, "three-men-in-a-room", budget-dealmaking and amending of bills by the Governor, Temporary Senate President, and Assembly Speaker – also behind closed doors.

On September 2, 2016, we embodied this second supplemental complaint in a second citizen-taxpayer action. It is unfolding in Supreme Court/Albany County – with a March 29, 2017 order to show cause, returnable on April 28, 2017 for declarations of unconstitutionality nullifying the entire executive budget for fiscal year 2017-2018. Here's the link to the webpage for it: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/9-2-16-osc-complaint/3-29-17-osc.htm>.

It will not take you long to review the March 29<sup>th</sup> order to show cause and recognize its potential. Please, therefore, call me as soon as you review it so that I might have the benefit of your thoughts and judgment. I have no doubt that based on Article VII, §§4, 5, 6 of the New York State Constitution and the reinforcing Court of Appeals decisions in *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 NY3d 75 (2004), and *New York State Bankers Association v. Wetzler*, 81 NY2d 98

(1993) – ALL posted on the webpage of the March 29<sup>th</sup> order to show cause – you will agree that the New York State budget is flagrantly “OFF THE CONSTITUTIONAL RAILS” and that the outcome of CJA’s March 29<sup>th</sup> order to show cause – and of the second citizen-taxpayer action on which it rests – must be summary judgment for the plaintiffs, AS A MATTER OF LAW.

As I stated to Mr. Sobel, I invite the Brennan Center to have “a piece of the action” by filing an *amicus curiae* brief and/or by making a motion to intervene, thereby contributing its wider perspective and achieving, through the citizen-taxpayer action, adjudications of the constitutional and legal dimensions of so much its groundbreaking work – and that of Professor Lane – all blithely ignored by New York’s governors and legislators. Certainly, too, the Brennan Center has a bully-pulpit and can easily issue press statements about the citizen-taxpayer action, as well as reach out to its large network of media and academic contacts so that the lawsuit receives both the press coverage and substantive scholarship it deserves.

The Brennan Center has a powerful opportunity, if not obligation, to play a leadership role in the citizen-taxpayer action, for the benefit of ALL New Yorkers. The March 29<sup>th</sup> order to show cause for declarations of unconstitutionality and unlawfulness of the New York State budget is OPEN & SHUT – and WE WILL WIN!

I look forward to hearing from you about the order to show cause – and as soon as possible.

Thank you.

Elena Sassower, Director  
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