CENTER for JUDICIAL ACCOUNTABILITY, INC.*

Post Office Box 8101
White Plains, New York 10602

Tel. (646) 220-7987

E-Mail: cja@judgewatch.org
Website: www.judgewatch.org

BY E-MAIL: c/o strell@sunshinesachs.com

July 9, 2012

Benjamin J. Kallos, Esq., Executive Director
Citizens' Committee for an Effective Constitution
600 Lexington Avenue, 10th Floor
New York, New York 10022

RE: Actualizing the Name, Purpose, and Methodology of the Citizens' Committee for an Effective Constitution

Dear Executive Director Kallos:

I am most disappointed not to have heard back from you.

My initial voice mail messages on June 14th and June 20th about the Citizens' Committee for an Effective Constitution were not returned. On June 25th, when I called you a third time, we briefly spoke and you asked me to call you back at 2 p.m. Yet, when I did, I again got your voice mail. On June 27th, I also got your voice mail – and left a message for you asking whether we might continue our conversation in person, as I was going to be in midtown Manhattan later that day and could stop by, if that was convenient. I received no return call.

I expect to be in Manhattan on Wednesday afternoon, July 11th. Would you be available for a meeting? If not, what other day would work for you?

On June 15th, I travelled to SUNY-New Paltz to meet with Professor Gerald Benjamin, as he is identified by the Citizens' Committee website, www.effectiveny.org, as not only a founder of the Committee with Bill Samuels and Assembly Minority Leader Brian Kolb, but as providing it with research and scholarship.

In response to my observation that it appeared from the Committee's website that there are no citizens on the Citizens' Committee for an Effective Constitution, Professor Benjamin acknowledged that the concept of a Citizens' Committee has yet to be actualized. I stated to him – and ten days later to you in our brief phone conversation – that I would like to be one such citizen and that I could furnish names of other citizens, like myself, who, over many decades, have labored "in the trenches" for an effective constitution and could meaningfully contribute to the Committee's objectives.

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* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

As I told both Professor Benjamin and you, I was privileged to participate with citizen activist Bob Schulz, fifteen years ago, in his patriotic effort to educate citizens about the importance of voting YES on the 1997 ballot question as to whether New York should convene a constitutional convention and had thereafter served as a board member of his We The People Foundation for Constitutional Education. Bob, who has brought a great many lawsuits against the state on constitutional grounds and is endeavoring to build a "Constitution Lobby" to "institute citizen vigilance", http://www.givemeliberty.org/constitutionlobby/, is an example of a citizen who can powerfully inform discussion about the state constitution, *as written and as applied.*

Likewise, James Ostrowski, Esq., who brought the *Bordeleau v. State of New York* case, to which Professor Benjamin refers in his article "*The State Constitution Doesn't Always Mean What It Says; Perhaps It Should*", posted on the Committee's webpage on the issue of "Constitutional Change" and containing a link to the oral argument of the case at the Court of Appeals from Jim's website, http://politicalclassdismissed.com/?p=12591.

Common to all three of us is that we can each attest from direct, first-hand experience that irrespective of the plain language of our state's constitution and black-letter adjudicative and ethical principles, our state courts are eviscerating the constitution to protect a corrupt *status quo* against meritorious citizen challenge.[1] Indeed, when I met with Professor Benjamin I noted to him the

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[1] See, *inter alia*, Jim Ostrowski's extensive January 23, 2012 motion for reargument of the Court of Appeals' decision in *Bordeleau v. State of New York*, accessible *via* a search on his politicalclassdismissed.com website. Its introduction reads:

> "This motion for reargument is the last plausible means by which to salvage 137 years of herculean effort by the People of the State through their Constitution to ban 'legal robbery' of their money by greedy business firms working in alliance with corrupt politicians. [Quote from Mayor Opdyke cited in Plaintiff's brief at 19] If this motion fails, the mind boggles while pondering what options remain to end this evil practice.
>
> The reason for the constitutional amendment initially was that the Legislature was giving away the people's money to special interest groups. However corrupt and unresponsive the Legislature was in 1874, the reality in 2011 is that it would be impossible for average citizens to persuade today's Legislature to abolish corporate welfare. Corporate welfare is in many ways how they finance their campaigns and maintain power.
>
> The notion of voting them out is naïve. Their re-election rate is absurdly high. Every intelligent observer knows that the political system in New York is rigged to protect and re-elect incumbents. In fact, there is evidence in the complaint in this case that legislators received legalized 'kick-backs' from corporate grantees in the form of campaign donations. [Record at 36-37] How can citizens defeat legislators who violate the Constitution and thereby get a kick-back to buy the critical TV ads that guarantee their re-election?
>
> The notion that citizens should respond to this Court's decision by amending the Constitution, is preposterous. The People already amended the Constitution to ban corporate grants. Any further attempt to ban corporate grants using plain language could be overridden by court decision as the present effort was on November 21st. And, obviously, having lost in the State's highest court on a pure issue of state law, the courts would be foreclosed to us if this motion is denied."

paragraph on the "About" page of the Committee's website:

> "Constitutional change in New York may be achieved both by formal proposal for action by the voters – either through amendments passed by successive sessions of the legislature or by holding a state constitutional convention – or by court interpretation." (underlining added).

As I stated to Professor Benjamin, there must be scholarly analysis of "court interpretation" of constitutional questions. To illustrate this, I discussed with him the Court of Appeals' February 23, 2010 decision in the three judicial pay raise lawsuits brought by state judges and the Unified Court System against the Legislature and Governor for their alleged separation of powers constitutional violation in linking judicial salaries with legislative salaries and other considerations.

The ONLY analysis of that important February 23, 2010 Court of Appeals decision is by me, a non-lawyer, as Director of the nonpartisan, nonprofit citizens' organization, Center for Judicial Accountability, Inc. (CJA). Embodied in a July 19, 2011 letter to Attorney General Schneiderman, it details the decision's fraudulence and states:

> "Tellingly…although New York boasts more than 160,000 lawyers – more than any other state[fn] – and 15 law schools, including some of our nation's most prestigious, they have not generated even one law review article or analytic critique of the February 23, 2010 Court of Appeals decision – at least none that we have found.[fn]" (at p. 8).

As I told Professor Benjamin, neither Attorney General Schneiderman nor any other recipient of this July 19, 2011 letter-analysis have denied or disputed its accuracy – or that such fraudulent February 23, 2010 decision emboldened state judges to seek hundreds of millions of dollars in damages against the state for a bogus separation of powers constitutional violation and intimidated then-Governor Paterson to introduce, and the Legislature to pass, Chapter 567 of the Law of 2010, creating a Special Commission on Judicial Compensation, whose judicial pay raise recommendations would require no further action by the Legislative and Executive branches to become law.

Here, too, this state's 160,000+ lawyers and 15 law schools have not generated any law review articles or analytic critiques as to the constitutionality of Chapter 567 of the Laws of 2010, *as written or as applied*. And once again, I, as CJA's Director, filled the breach. By a October 27, 2011 Opposition Report, I chronicled the unconstitutionality, statutory violations, and fraud of the Special Commission's August 27, 2011 Final Report, recommending 27% judicial pay raises, so that the highest constitutional officers of our three government branches, Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman, could take appropriate action, beginning with a legislative override to prevent the recommendations from becoming law on April 1, 2012. Thereafter, upon the non-response of these constitutional officers and the comparable

nonfeasance of two other highest constitutional officers, Attorney General Schneiderman and Comptroller DiNapoli, I filled the breach yet again. This time, by a public interest lawsuit on behalf of the People of New York, commenced on March 30, 2012, seeking a declaratory judgment as to the unconstitutionality of Chapter 567 of the Laws of 2010, *as written and as applied*, and charging the constitutional officers of our three government branches with eviscerating separation of powers by colluding with each other against the People of the state, motivated by their desire to secure their own pay raises.

The lawsuit is currently pending in Supreme Court/Bronx County before Justice Mary Ann Brigantti-Hughes, who, ironically, in 1993 and 1994, was a member of the Temporary State Commission on Constitutional Revision, to which Professor Benjamin was Research Director.[2]

Although the March 30, 2012 verified complaint and its exhibits, including the underlying July 19, 2011 letter-analysis of the Court of Appeals' February 23, 2010 decision and the October 27, 2011 Opposition Report, are all posted on CJA's website, www.judgewatch.org, accessible *via* the top panel "Latest News"[3], I provided hard copies to Professor Benjamin to enable him to more conveniently evaluate the serious and substantial constitutional issues presented, warranting examination and discussion by experts of our state constitution and political science scholars[4] – consistent with the Committee's articulated methodology, reiterated throughout its website, of "engender[ing] informed discussion, debate, and action regarding changes to the New York State Constitution that will produce more democratic, responsive, and EFFECTIVE state and local government." ("About" webpage, capitalization in the original, underlining added).

Indeed, as I stated to Professor Benjamin, the March 30, 2012 verified complaint warrants scholarship for a further reason: it offers an unparalleled opportunity to critically examine, in one fell swoop, what became of the three constitutional amendments approved by New York voters in 1977: (1) "merit selection" appointment of Court of Appeals judges; (2) the Commission on Judicial Conduct; and (3) the Unified Court System – as to which, 35 years later, there has been NO scholarship.

Upon my follow-up phone message for Professor Benjamin on June 25th, I received a prompt return call the next morning from his assistant that the Professor was away, but that he would get back to

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[2] Justice Brigantti-Hughes, who was then with the New York State Department of Law, is listed as a member of the Temporary State Commission on Constitutional Revision in its 1994 Briefing Book on the New York State Constitution – though not in its 1995 Final Report: Effective Government Now for the New Century.

[3] The July 19, 2011 letter, analyzing the Court of Appeals' February 23, 2010 decision, is Exhibit E-1 to CJA's October 27, 2011 Opposition Report. It is also Exhibit J to CJA's March 30, 2012 verified complaint. Nonetheless, because of its significance, a copy is enclosed.

[4] I also furnished Professor Benjamin with an executive summary of the Opposition Report and a press release of the lawsuit. Though also posted on our website, copies are enclosed, for your convenience.

me within the next two weeks. Meantime, I advised her that links to the Professor and his Center for Research, Regional Education, and Outreach (CRREO) on the Committee's website were broken and that I had begun to independently contact constitutional scholars and other experts of New York state government, so as to alert them to the constitutional issues presented by the unfolding lawsuit, for which scholarship is exigent.

Thus far, the scholars with whom I have spoken include Thomas Gais, Director of the Rockefeller Institute of Government (at SUNY-Albany), who collaborated with Professor Benjamin on articles relating to constitutional conventions and amending constitutions, and Seymour Lachman, Director of the Hugh Carey Institute for Government Reform (at Wagner College), who, prior to his serving in the State Senate for nine years, had been a professor of government theory at CUNY Graduate Center and Baruch College. Both promptly called me back upon my leaving phone messages for them and each allowed me to make extensive presentations, as to which they expressed great interest and appreciation of the importance of what I was saying. Memorably, Director Gais asked me "what do you suggest?" and ended our conversation by graciously remarking "I've learned a lot from you". Likewise, expressing great interest and appreciation was E.J. McMahon, Senior Fellow of the Manhattan Institute and founder of its Empire Center for Public Policy, whose 2010 article "*New York's Exploding Pension Costs*" is cited at footnote 45 of Assembly Minority Leader Kolb's 2011 article "*New York's Last, Best Hope for Real Reform: The Case for Convening a Constitutional Convention*", Albany Government Law Review, Volume 4, pp. 601-624, accessible from the Committee's webpage, http://effectiveny.org/issue-summary/Convention. Indeed, while I was speaking with Mr. McMahon, he accessed Chapter 567 of the Laws of 2010, posted on CJA's website, so as to verify what I was saying: that the statute expressly required the Special Commission on Judicial Compensation to examine "compensation and non-salary benefits" – as, for instance, pensions, medical insurance, and other perks – which the Commission had NOT done in making its recommendation to raise judicial salaries 27% over three years – with such statutory violation evident from the face of the Commission's paltry August 29, 2011 Final Report, also posted on our website. Mr. McMahon told me that busy as he was, this greatly interested and concerned him and he asked me for my contact information, stating he was entering it into his computer contacts. Robert Polner, a former Newsday reporter, who co-authored with Professor Lachman the books Three Men in a Room: The Inside Story of Power and Betrayal in an American Statehouse, and The Man Who Saved New York: Hugh Carey and the Great Fiscal Crisis of 1975 – and who I directly reached by phone – also expressed interest, as well as recognition that CJA's October 27, 2011 Opposition Report and lawsuit was a powerful news story whose electoral potential could knock out two of the "three men in the room", up for re-election in the fall – Temporary Senate President Skelos and Assembly Speaker Silver – a boon for reform.

Until now, I have deferred contacting Bill Samuels, whose financial largesse presumably pays the expenses of the Citizens' Committee for an Effective Constitution – a project of the New Roosevelt Foundation, which he founded and presumably underwrites. I did, however, phone Assembly Minority Leader Kolb's Albany office, so as to ascertain his knowledge of the October 27, 2011 Opposition Report, underlying the lawsuit in which he, as a member of the Assembly, is a defendant. Based on my telephone conversations with staff of the Assembly Ways and Means Committee who

work with Assembly Minority Leader Kolb and who, until my calls, were unaware of both the October 27, 2011 Opposition Report and March 30, 2012 verified complaint, it would appear that in keeping with the dysfunctional "three men in a room" manner in which our state government operates, Assembly Speaker Silver and Temporary Senate President Skelos withheld these documents from him – which, if so, would be a further basis to unseat them in this year's elections.

In any event, Assembly Minority Leader Kolb NOW knows of the October 27, 2011 Opposition Report and March 30, 2012 verified complaint based thereon. What actions will he take, consistent with his reform advocacy for responsible, responsive government and an effective constitution? Will he publicly call upon the named defendants in the suit – Governor Cuomo, Attorney General Schneiderman, Comptroller DiNapoli, Temporary Senate President Skelos, Assembly Speaker Silver, and Chief Judge Lippman – to account for why they did not respond to the Opposition Report and disgorge their findings of fact and conclusions of law with respect to the constitutional and statutory violations and fraud therein particularized? Will he come forward with his own findings of fact and conclusions of law? And what is his response to the verified complaint? Does he deny or dispute the correctness of its causes of action and, if not – because he cannot – what will he do to prevent further imposition on the public purse by judicial pay raises shown to be unconstitutional, statutorily violative, and fraudulent?

Ironically, at the conclusion of his article "*New York's Last, Best Hope for Real Reform: The Case for Convening a Constitutional Convention*", Assembly Minority Leader Kolb wrote:

> "State government's dysfunction, corruption, and fiscal irresponsibility are still the ultimate trump card that can mobilize public opinion and serve as an urgent call to action." (at p. 623).

The March 30, 2012 verified complaint, seeking to safeguard checks and balances and with it, millions, and ultimately, billions, of taxpayer dollars, is that "trump card", chronicling "dysfunction, corruption, and fiscal irresponsibility" of such unconstitutional and criminal dimension as to be capable of galvanizing the public to oust the culpable public officers and force sweeping reforms in defense of its pocket book, the rule of law, and our existing constitution. Certainly, it is a touchstone by which those true to honest, accountable, constitutional governance may be judged.

I look forward to hearing from you soon. Meantime, to underscore the difference between rhetoric and reality and to further highlight the leadership role played by citizens in the 1997 struggle for a constitutional convention, I enclose my September 9, 1997 letter to former gubernatorial candidate B. Thomas Golisano, who had appeared before Bob Schulz' We The People Congress – to which neither I nor Bob received any response.

Yours for a quality judiciary
& a People's constitutional convention,

ELENA RUTH SASSOWER, Director
Center for Judicial Accountability, Inc. (CJA)

Enclosures: (1) CJA's July 19, 2011 letter to Attorney General Schneiderman, analyzing the Court of Appeals' February 23, 2010 decision in the judges' judicial pay raise lawsuits
(2) Executive Summary to CJA's October 27, 2011 Opposition Report
(3) Press Release of CJA's March 30, 2011 lawsuit vs the three government branches
(4) my September 9, 1997 letter to B. Thomas Golisano, with its attached transcript excerpt from the July 7, 1997 meeting of We the People Congress

cc: Gerald Benjamin, Research Director/Founder, Citizens' Committee for an Effective Constitution
Bill Samuels, Founder, Citizens' Committee for an Effective Constitution
Assembly Minority Leader Brian Kolb, Founder, Citizens' Committee for an Effective Constitution
Robert L. Schulz, Citizen Activist
James Ostrowski, Esq., Citizen Activist
Thomas Gais, Director, Rockefeller Institute of Government (SUNY-Albany)
Seymour Lachman, Director, Carey Center for Government Reform (Wagner College)
Edmund J. McMahon, Senior Fellow, Manhattan Institute/Empire Center for NYS Policy
Robert Polner, Author/Journalist
B. Thomas Golisano, Billionaire