

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) [elena@judgewatch.org]
Sent: Friday, September 07, 2012 5:18 PM
To: 'lee.rowland@nyu.edu'
Cc: 'NordenL@exchange.law.nyu.edu'; 'Eric.Lane@hofstra.edu'; 'EJM@EmpireCenter.org'; 'seymour.lachman@wagner.edu'
Subject: Reforming NYS Government NOW: The Unconstitutionality of NYS' Legislative Rules, as Written & as Applied

Dear Ms. Rowland,

Thank you for passing on my yesterday's voice mail message to Larry Norden. Below is my e-mail on the same topic that he should have also received yesterday.

Based on the Brennan Center's OWN fact-specific 2004 report and equally fact-specific 2006 and 2008 updates, no great resources would be required for a lawsuit challenging the constitutionality of the NYS legislative rules, *as written and as applied*. Indeed, a declaration of unconstitutionality could be achieved by SUMMARY JUDGMENT.

Does the Brennan Center disagree?

I look forward to discussing the matter directly with Mr. Norden at his earliest convenience – as likewise with other experts and constitutional scholars at the Brennan Center and NYU Law School.

Perhaps, as counsel at the Brennan Center's Democracy Program, you could facilitate a meeting on the subject.

Thank you.

Elena Sassower
 646-220-7987

From: Center for Judicial Accountability, Inc. (CJA) [mailto:elena@judgewatch.org]
Sent: Thursday, September 06, 2012 11:51 AM
To: 'Eric.Lane@hofstra.edu'
Cc: 'NordenL@exchange.law.nyu.edu'; 'EJM@EmpireCenter.org'; 'seymour.lachman@wagner.edu'
Subject: The Unconstitutionality of NYS' Legislative Rules, as Written & as Applied

Dear Professor Lane,

Following up my voice message for you earlier today, my previous voice messages, as well as three e-mail to which you have been an indicated recipient (8/21/12-to E.J. McMahon; 8/21/12 to Seymour Lachman; and 8/23/12 to Lawrence Norden), I am herewith forwarding Mr. Norden's responding August 28th e-mail to me, as it does not indicate you as a recipient.

As you know, I have been trying to build on the important contribution you made by your article "*Albany's Travesty of Democracy*", published in the Spring 1997 issue of the City Journal – the apparent genesis for the Brennan Center's 2004 report, The New York State

Legislative Process: An Evaluation and Blueprint for Reform.

Although neither your article nor the Brennan Center report identify NYS' legislative rules as unconstitutional, *as written and as applied*, would you not agree that that is the sum and substance of what you both describe? And would you not agree that a lawsuit challenging the legislative rules as unconstitutional would be an EASY fix to our dysfunctional legislative branch, achieving the critical reforms advocated by the Brennan Center's 2004 report, but not remotely secured by it or by its 2006 and 2008 updates?

Please call me at your earliest convenience to discuss.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
646-220-7987

From: Norden, Lawrence [mailto:NordenL@exchange.law.nyu.edu]
Sent: Tuesday, August 28, 2012 6:59 PM
To: Center for Judicial Accountability, Inc. (CJA)
Subject: Re: Predicating Electoral Endorsements on the Brennan Center's Recommended Legislative Rule Changes

Ms. Sassower,

Thank you for your e-mail and voicemail messages. I am afraid I have been called away from the office for several days to deal with personal matters.

As you no doubt know, the Brennan Center works on many issues nationally. In a presidential election year we are exceptionally busy with limited resources. We will do what we can to help rules changes get done next year. If your organization wants to take additional steps, including those you suggest in this email and in your voicemails to me, I strongly encourage you to do so.

Kind regards,
Larry Norden

Sent from my iPhone

On Aug 23, 2012, at 4:35 PM, "Center for Judicial Accountability, Inc. (CJA)"
<elena@judgewatch.org> wrote:

<image001.jpg>

Dear Mr. Norden,

This follows up my phone call to you yesterday in which I proposed that the Brennan Center immediately contact the editorial boards of this state's newspapers as they are doubtlessly already deciding on whether to endorse incumbent legislators seeking re-election or their challengers – and no candidate should be endorsed who is not committed to the democracy-essential legislative rule changes proposed by the Brennan Center's 2004 report, "The New York State Legislative Process: An Evaluation and Blueprint for Reform" – or who, as an incumbent legislator, failed to do everything in his/her power to see them implemented.

Of course, it is not only newspapers that sway the voting public by their endorsements -- organizations, associations, unions also do, as, likewise, public figures. My yesterday's proposal should, therefore, be expanded: the Brennan Center should immediately contact them, too.

Neither proposal is difficult for the Brennan Center. Indeed, the first paragraph of the Preface to the Brennan Center's 2006 update "Unfinished Business: New York State Legislative Reform" identifies that "Dozens of newspaper editorials endorsed [the] conclusions" of its 2004 report and that "A coalition of 83 organizations, including civic, business, religious and labor groups, formed to press for change." Surely, they would be receptive to ensuring that any re-elected incumbent or new legislator be committed to legislative rule change, without which dysfunction will remain the norm.

Time is of the essence. Please confirm that the Brennan Center will be following through with these two proposals -- largely inspired by the closing paragraph of Eric Lane's 1997 article "*Albany's Tragedy of Democracy*", itself the genesis of the Brennan Center's 2004 report:

"Lasting change will come about in Albany only when reform becomes a standard election issue, like taxes, criminal justice, and the schools. Voters will have to press candidates on their willingness to turn the Legislature into a true representative body. Editorial boards and interest groups will have to stake their endorsements on a commitment to openness and deliberation. Today, legislators' complicity in the Albany system costs them nothing. Tomorrow, it should cost them their jobs."

As each and every one of the Brennan Center's recommended legislative rule changes is so eminently sensible, incumbent legislators must be interrogated as to each and called to account for the proposed rule changes that were not enacted.

I assume that changing the Senate and Assembly rules is a matter of majority vote by the Senators and Assembly members. Is that correct? Or are the changes made by the Senate Majority Leader and Assembly Speaker, whose election is by a majority vote of the Senators and Assembly members of the majority party of each house? I don't see the specifics of how changes are made to the legislative rule in either the 2004 report or the subsequent 2006 and 2008 updates. Maybe you, Professor Lane, or someone else at the Brennan Center will do an op-ed piece containing such particulars so that the voters can better understand the situation.

Please call me as soon as you are able, as I have several additional suggestions to discuss. You were unavailable when I called about 2 hours ago, leaving a message on your voice mail.

Thanks.

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