

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Friday, August 23, 2019 8:37 AM
To: tim.fenster@niagara-gazette.com
Cc: ngedit@niagara-gazette.com
Subject: **Follow-up --"Local voters, officials sue for fusion voting" (Niagara-Gazette, July 23)**

TO: Tim Fenster/Niagara-Gazette

How about following up on your excellent July 23rd article "[Local voters, officials sue for fusion voting](#)" by obtaining the expert opinions of scholars and bar associations, etc. as to the constitutionality of the Public Campaign Financing and Election Commission – and similar commissions/committees whose recommendations have the “force of law”. Below is my letter to the editor on the subject, which the New York Law Journal published on its website on August 20th.

This is an explosive state-wide story, with lots of local angles – and I would be happy to assist you and the Niagara-Gazette with leads. Call me, at your convenience, so that we can discuss it.

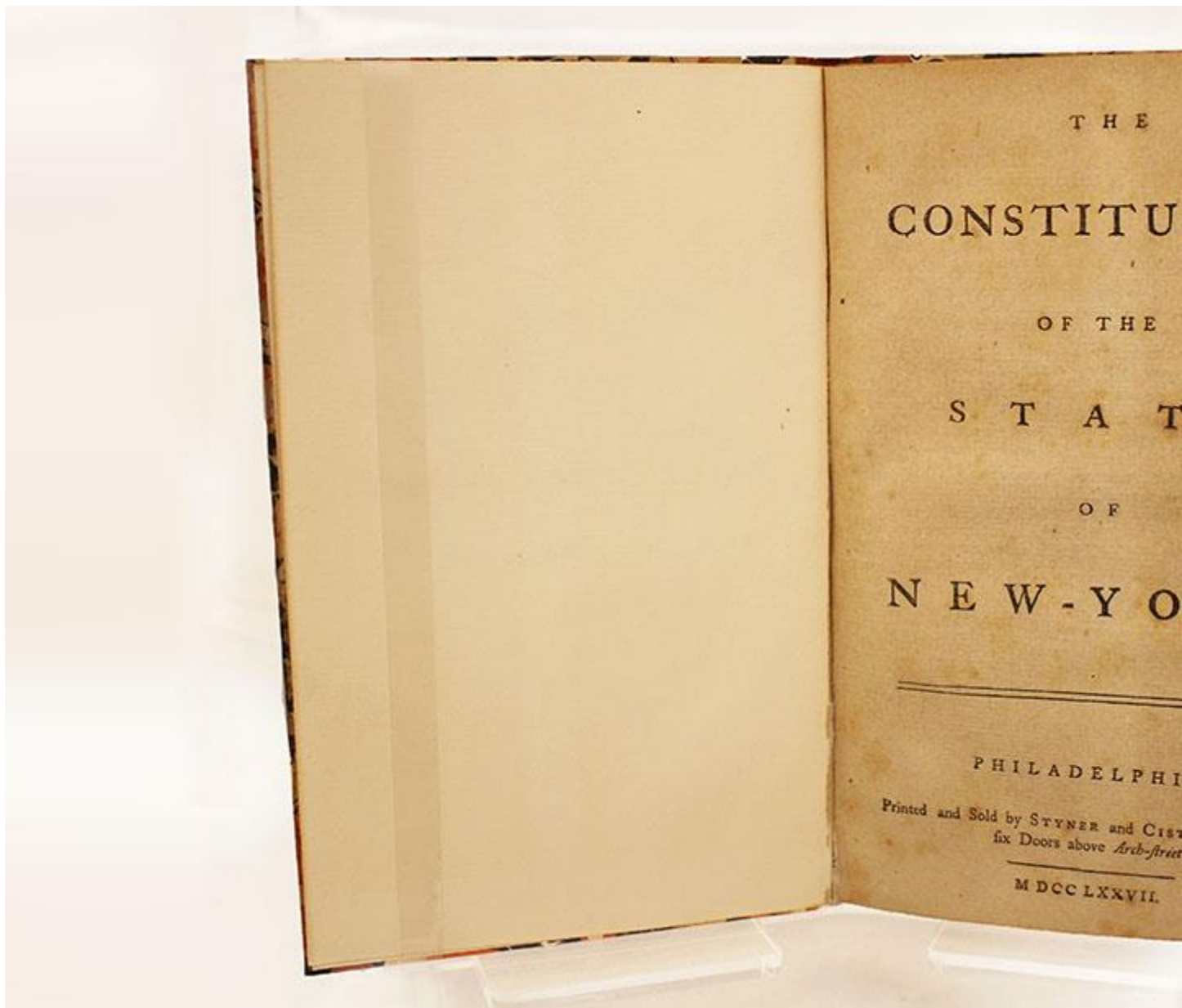
Thank you.

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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.